

# APPROPRIATIONS

## CHAPTER 1

HOUSE BILL NO. 1001  
(Committee on Appropriations)

### LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses thereof, for the fiscal period beginning with the effective date of this Act and ending June 30, 1993, as follows:

Subdivision 1.

FIFTY-SECOND AND FIFTY-THIRD LEGISLATIVE ASSEMBLIES AND BIENNIUM

Salaries and wages	\$ 4,209,263
Operating expenses	1,836,702
Equipment	33,568
National conference of state legislatures	116,104
Total general fund appropriation	<u>\$ 6,195,637</u>

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$ 2,981,408
Operating expenses	1,213,860
Equipment	11,825
Total general fund appropriation	<u>\$ 4,207,093</u>

Grand total general fund appropriation \$10,402,730

SECTION 2. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or his designee upon the finding by the chairman or his designee that the nature of studies and duties assigned to the council requires such transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-second and fifty-third legislative assemblies, upon request of the chairman of the legislative council or his designee upon the finding by the chairman or his designee that such transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 2

HOUSE BILL NO. 1002  
(Committee on Appropriations)

## JUDICIAL BRANCH

AN ACT to provide an appropriation for defraying the expenses of the judicial branch; to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to the salaries of the judges of the supreme and district courts; and to provide for a legislative council study of the feasibility and desirability of including all county judges in the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the judicial branch for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

## Subdivision 1.

## SUPREME COURT

Salaries and wages	\$ 4,053,691
Information services	204,000
Operating expenses	1,035,390
Equipment	28,000
Judges retirement	269,505
Court of appeals	22,000
Total all funds	\$ 5,612,586
Less estimated income	213,828
Total general fund appropriation	\$ 5,398,758

## Subdivision 2.

## DISTRICT COURTS

Salaries and wages	\$12,551,844
Information services	50,226
Operating expenses	3,959,324
Equipment	121,224
Judges retirement	877,182
Total all funds	\$17,559,800
Less estimated income	101,942
Total general fund appropriation	\$17,457,858

## Subdivision 3.

JUDICIAL CONDUCT COMMISSION  
AND DISCIPLINARY BOARD

Salaries and wages	\$ 230,473
Information services	9,998

Operating expenses	95,501
Equipment	12,500
Total all funds	<u>\$ 348,472</u>
Less estimated income	<u>72,000</u>
Total general fund appropriation	\$ 276,472
Grand total general fund appropriation H.B. 1002	\$23,133,088
Grand total special funds appropriation H.B. 1002	\$ 387,770
Grand total all funds appropriation H.B. 1002	\$23,520,858

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in such federal acts or private gifts, grants, and donations for the period beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires such transfers to carry on properly the functions of the judicial branch of government.

\* SECTION 4. AMENDMENT. Section 27-02-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court ~~shall~~ is entitled to receive an annual salary commencing July 1, ~~1989~~ 1991, of ~~sixty-three~~ seventy-one thousand ~~eight hundred seventy-one~~ seventy-five dollars except that the chief justice of the supreme court ~~shall~~ is entitled to receive an additional ~~one two thousand seven hundred seventy-seven~~ one thousand nine hundred one dollars per annum ~~and commencing on July 1, 1990~~, each judge of the supreme court ~~shall~~ receive an annual salary of ~~sixty-eight thousand three hundred forty-two~~ sixty-two thousand nine hundred sixty-nine dollars except that the chief justice of the supreme court ~~shall~~ receive an additional ~~one thousand nine hundred one~~ one thousand nine hundred one dollars per annum.

\*\* SECTION 5. AMENDMENT. Section 27-05-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state ~~shall~~ is entitled to receive an annual salary commencing July 1, ~~1989~~ 1991, of ~~fifty-nine~~ sixty-five thousand four hundred ~~five~~ nine dollars and commencing July 1, ~~1990~~, an annual salary of ~~sixty-two thousand nine hundred sixty-nine~~ sixty-two thousand nine hundred sixty-nine dollars and ~~his~~ his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of ~~his~~ his official duties outside the county in which ~~his~~ the judge's chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district ~~shall~~ is entitled to receive an additional one thousand ~~four~~ four hundred ~~eight~~ eight fifty dollars per annum commencing July 1, ~~1989~~, and ~~one thousand four hundred ninety-three~~ one thousand four hundred ninety-three dollars per annum commencing July 1, ~~1990~~ 1991.

\* NOTE: Section 27-02-02 was also amended by section 6 of Senate Bill No. 2594, chapter 53.

\*\* NOTE: Section 27-05-03 was also amended by section 7 of Senate Bill No. 2594, chapter 53.

SECTION 6. LEGISLATIVE COUNCIL STUDY OF INCLUDING ALL COUNTY JUDGES IN THE PUBLIC EMPLOYEES RETIREMENT SYSTEM. During the 1991-92 interim the legislative council may study the feasibility and desirability of including all county judges in the public employees retirement system. The legislative council may report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-third legislative assembly.

Approved April 16, 1991  
Filed April 18, 1991

**CHAPTER 3**

HOUSE BILL NO. 1003  
(Committee on Appropriations)

**HIGHER EDUCATION**

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system and the various institutions of higher learning under the supervision of the state board of higher education; to provide an exemption to the provisions of section 54-44.1-11 of the North Dakota Century Code; and to amend and reenact sections 15-10-18.3 and 15-10-18.5 of the North Dakota Century Code, relating to tuition waivers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM

Salaries and wages	\$ 1,625,652
Information services	73,175
Operating expenses	394,767
Equipment	24,150
Telecommunications	1,200,000
Computer network management	211,680
Higher education contingency fund	182,937
Institutional public relations and development	500,000
Professional student exchange program	1,130,400
Experimental program to stimulate competitive research	5,000,000
Scholars program	688,262
Perkins loan program match	102,885
Title II grant	300,000
Paul Douglas scholarship	99,420
Student financial assistance grants	3,828,221
Special initiatives	300,000
Native American scholarships	200,000
Institutional pay equity adjustments	644,442
Total all funds	<u>\$ 16,505,991</u>
Less budget adjustment	158,039
Less estimated income	4,799,420
Total general fund appropriation	<u>\$ 11,548,532</u>

Subdivision 2.		
	BISMARCK STATE COLLEGE	
Salaries and wages		\$ 12,389,340
Operating expenses		3,493,725
Equipment		569,777
Capital improvements		317,354
Total all funds		<u>\$ 16,770,196</u>
Less budget adjustment		122,175
Less estimated income		<u>7,720,232</u>
Total general fund appropriation		\$ 8,927,789

Subdivision 3.		
	UNIVERSITY OF NORTH DAKOTA - LAKE REGION	
Salaries and wages		\$ 3,561,868
Operating expenses		1,217,975
Equipment		253,517
Capital improvements		81,980
Total all funds		<u>\$ 5,115,340</u>
Less budget adjustment		41,294
Less estimated income		<u>2,056,512</u>
Total general fund appropriation		\$ 3,017,534

Subdivision 4.		
	UNIVERSITY OF NORTH DAKOTA - WILLISTON	
Salaries and wages		\$ 3,987,914
Operating expenses		987,459
Equipment		187,670
Capital improvements		101,078
Total all funds		<u>\$ 5,264,121</u>
Less budget adjustment		38,264
Less estimated income		<u>2,429,773</u>
Total general fund appropriation		\$ 2,796,084

Subdivision 5.		
	UNIVERSITY OF NORTH DAKOTA	
Salaries and wages		\$ 88,947,230
Operating expenses		24,832,659
Equipment		2,199,002
Capital improvements		6,308,546
Total all funds		<u>\$122,287,437</u>
Less budget adjustment		1,038,505
Less estimated income		<u>45,361,128</u>
Total general fund appropriation		\$ 75,887,804

Subdivision 6.		
	NORTH DAKOTA STATE UNIVERSITY	
Salaries and wages		\$ 71,054,659
Operating expenses		21,002,471
Equipment		2,188,242
Capital improvements		2,320,245
Total all funds		<u>\$ 96,565,617</u>
Less budget adjustment		843,378
Less estimated income		<u>34,093,198</u>
Total general fund appropriation		\$ 61,629,041

## Subdivision 7.

## NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	\$ 19,659,313
Operating expenses	5,394,598
Equipment	999,607
Capital improvements	621,382
Total all funds	<u>\$ 26,674,900</u>
Less budget adjustment	268,292
Less estimated income	6,801,444
Total general fund appropriation	<u>\$ 19,605,164</u>

## Subdivision 8.

## DICKINSON STATE UNIVERSITY

Salaries and wages	\$ 10,672,014
Operating expenses	3,165,362
Equipment	277,787
Capital improvements	245,899
Total all funds	<u>\$ 14,361,062</u>
Less budget adjustment	131,310
Less estimated income	4,634,427
Total general fund appropriation	<u>\$ 9,595,325</u>

## Subdivision 9.

## MAYVILLE STATE UNIVERSITY

Salaries and wages	\$ 7,010,789
Operating expenses	1,859,191
Equipment	112,698
Capital improvements	310,213
Total all funds	<u>\$ 9,292,891</u>
Less budget adjustment	90,912
Less estimated income	2,558,643
Total general fund appropriation	<u>\$ 6,643,336</u>

## Subdivision 10.

## MINOT STATE UNIVERSITY

Salaries and wages	\$ 23,920,433
Operating expenses	4,934,617
Equipment	669,382
Capital improvements	670,668
Total all funds	<u>\$ 30,195,100</u>
Less budget adjustment	243,046
Less estimated income	12,191,679
Total general fund appropriation	<u>\$ 17,760,375</u>

## Subdivision 11.

## VALLEY CITY STATE UNIVERSITY

Salaries and wages	\$ 9,322,419
Operating expenses	2,252,691
Equipment	212,308
Capital improvements	397,918
Total all funds	<u>\$ 12,185,336</u>
Less budget adjustment	117,178
Less estimated income	3,505,486
Total general fund appropriation	<u>\$ 8,562,672</u>

## Subdivision 12.

## NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU

Salaries and wages	\$ 3,289,875
Operating expenses	878,737
Equipment	92,280
Capital improvements	251,335
Total all funds	\$ 4,512,227
Less budget adjustment	41,285
Less estimated income	1,454,085
Total general fund appropriation	\$ 3,016,857

## Subdivision 13.

## NORTH DAKOTA STATE UNIVERSITY - STATE TOXICOLOGIST

Salaries and wages	\$ 523,672
Operating expenses	103,000
Equipment	18,000
Total all funds	\$ 644,672
Less budget adjustment	8,190
Less estimated income	38,000
Total general fund appropriation	\$ 598,482

## Subdivision 14.

## NORTH DAKOTA FOREST SERVICE

Salaries and wages	\$ 1,591,462
Operating expenses	385,259
Equipment	120,900
Capital improvements	70,000
Total all funds	\$ 2,167,621
Less budget adjustment	18,989
Less estimated income	761,015
Total general fund appropriation	\$ 1,387,617

## Subdivision 15.

## UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	\$ 40,652,480
Operating expenses	16,817,309
Equipment	1,384,431
Total all funds	\$ 58,854,220
Less budget adjustment	371,748
Less estimated income	31,317,320
Total general fund appropriation	\$ 27,165,152

## Subdivision 16.

## MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	\$ 16,122,901
Operating expenses	8,039,216
Equipment	348,356
Total appropriation from institutional income	\$ 24,510,473
Grand total general fund appropriation H.B. 1003	\$258,141,764
Grand total special funds appropriation H.B. 1003	\$190,530,347
Grand total all funds appropriation H.B. 1003	\$448,672,111

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency fund in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 1 through 15 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the higher education contingency fund to the various entities



and institutions and which line items in the various institutions and entities shall be adjusted.

**SECTION 3. APPROPRIATION.** There are hereby appropriated any funds received by the board of higher education, not otherwise appropriated, pursuant to federal acts and private grants for the purpose as designated in such federal acts or other grants for the period beginning July 1, 1991, and ending June 30, 1993.

**SECTION 4. ADDITIONAL INCOME.** Any additional income not required by law to be deposited in operating funds in the state treasury is hereby appropriated. All income in excess of estimated income in the budget appropriated by the legislative assembly to the institutions of higher learning must be deposited in their respective operating funds in the state treasury and is hereby appropriated and can be spent only upon authorization of the emergency commission.

**SECTION 5. TRANSFER.** The state board of higher education may make such transfers between line items in subdivision 1 of section 1, other than professional student exchange program, student financial assistance grants and experimental program to stimulate competitive research, as may be necessary and manageable to provide for board or institutional budget requirements. The board shall notify the office of management and budget of each transfer.

**SECTION 6. TRANSFERS.** Each institution or agency included in subdivisions 2 through 16 of section 1, upon approval of the state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operations of the institution or agency. The board shall notify the office of management and budget of each transfer.

**SECTION 7. TRANSFER.** The state board of higher education may transfer monies from the institutional pay equity adjustments line item in subdivision 1 of section 1 of this Act to the salary and wage line item of any of the entities under the control of the board. The board shall notify the office of management and budget of such transfers.

**SECTION 8. EXEMPTION.** The operating expenses, higher education contingency fund, student financial assistance grants, and reciprocal agreements appropriations contained in subdivision 1 of section 1 of chapter 32 of the 1989 Session Laws shall not be subject to the provisions of North Dakota Century Code section 54-44.1-11 and any unexpended funds from these appropriations shall be available during the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 9. DEPOSIT OF FUNDS.** Funds received from Minnesota by the board of higher education pursuant to the reimbursement provisions of the Minnesota-North Dakota public higher education and vocational technical education tuition reciprocity agreement authorized by chapter 15-10.1 of the North Dakota Century Code, shall be deposited in the board of higher education special revenue fund in the state treasury. These funds shall be used for the North Dakota student financial assistance program authorized by chapter 15-62.2 of the North Dakota Century Code.

**SECTION 10. ESTIMATED INCOME.** Subdivision 5 of section 1 includes the sum of \$1,025,442, or so much thereof as may be necessary, in the estimated

income line item from the net proceeds from issuance of parts a and b of the December 1990 certificates of participation approved by the board of higher education to be used for the financing of capital projects for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 11. APPROPRIATION. There is hereby appropriated the sum of \$6,297,512, or so much thereof as may be necessary, to the university of North Dakota from proceeds of the December 1990 issue of certificates of participation approved by the board of higher education. These funds shall not be expended for any purpose except for costs of issuance. The funds shall be deposited by the university of North Dakota in an interest-bearing account for the purpose of making the payments on this issue. The issue shall be repaid immediately, if possible.

SECTION 12. LEGISLATIVE INTENT. It is the intent of the legislative assembly that Dickinson state university may add the necessary positions for an air traffic controllers program if the board of higher education approves a cooperative air traffic controller program between the university of North Dakota and Dickinson state university.

SECTION 13. AMENDMENT. Section 15-10-18.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-18.3. Free tuition in North Dakota institutions of higher education. Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~shall be allowed to obtain a bachelor's degree, or certificate of completion, for so long as he is eligible, free of any~~ may be granted a waiver of tuition and fee charges, except those charged to retire outstanding bonds, ~~provided, however, that such.~~ The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver applies only to a bachelor's degree or certificate of completion that is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, there shall be no removal from the benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.

SECTION 14. AMENDMENT. Section 15-10-18.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter or peace officer. Should a firefighter or peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported technical or vocational school, ~~must be allowed to obtain a bachelor's degree, or certificate of completion, for so long as the survivor is eligible, free~~ may be granted a waiver of any tuition and fee charges, except those charged to retire outstanding bonds, ~~provided, however, that the.~~ The waiver must be based upon a showing of financial need, using the same criteria as that used to determine eligibility for federal financial aid under Title IV of the Higher Education Act of 1965, as amended. The waiver

applies only to a bachelor's degree or certificate of completion that is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 4

HOUSE BILL NO. 1004  
(Committee on Appropriations)

### UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

AN ACT making an appropriation for defraying the expenses of the upper great plains transportation institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the upper great plains transportation institute for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,201,055
Operating expenses	464,644
Equipment	30,650
Grants, benefits, and claims	<u>1,800,000</u>
Total all funds	\$3,496,349
Less estimated income	<u>3,098,622</u>
Total general fund appropriation	\$ 397,727

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the upper great plains transportation institute except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items, and shall notify the office of management and budget within ten days following such transfer.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 5

HOUSE BILL NO. 1005  
(Committee on Appropriations)

## EXTENSION SERVICE AND RESEARCH STATIONS

AN ACT making an appropriation for defraying the expenses of the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station; and to provide a contingent appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

## Subdivision 1.

## NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Salaries and wages	\$18,428,550
Operating expenses	3,587,344
Equipment	458,008
Total all funds	<u>\$22,473,902</u>
Less estimated income	11,825,507
Total general fund appropriation	<u>\$10,648,395</u>

## Subdivision 2.

## NORTHERN CROPS INSTITUTE

Salaries and wages	\$ 575,655
Operating expenses	82,400
Equipment	210,000
Total all funds	<u>\$ 868,055</u>
Less estimated income	300,511
Total general fund appropriation	<u>\$ 567,544</u>

## Subdivision 3.

## NORTH DAKOTA STATE UNIVERSITY MAIN RESEARCH STATION

Salaries and wages	\$30,880,270
Operating expenses	5,026,200
Equipment	1,379,380
Capital improvements	528,822
Animal replacement	300,000
Total all funds	<u>\$38,114,672</u>
Less estimated income	16,243,342
Total general fund appropriation	<u>\$21,871,330</u>

Subdivision 4.		
	DICKINSON RESEARCH CENTER	
Salaries and wages		\$ 878,521
Operating expenses		444,100
Equipment		41,076
Capital improvements		71,000
Total all funds		\$ 1,434,697
Less estimated income		391,676
Total general fund appropriation		\$ 1,043,021
Subdivision 5.		
	CENTRAL GRASSLANDS RESEARCH CENTER	
Salaries and wages		\$ 424,923
Operating expenses		344,000
Equipment		116,700
Capital improvements		37,000
Total all funds		\$ 922,623
Less estimated income		384,900
Total general fund appropriation		\$ 537,723
Subdivision 6.		
	HETTINGER RESEARCH CENTER	
Salaries and wages		\$ 481,686
Operating expenses		197,700
Equipment		73,600
Capital improvements		25,000
Total all funds		\$ 777,986
Less estimated income		256,069
Total general fund appropriation		\$ 521,917
Subdivision 7.		
	LANGDON RESEARCH CENTER	
Salaries and wages		\$ 549,698
Operating expenses		175,500
Equipment		44,000
Capital improvements		36,000
Total all funds		\$ 805,198
Less estimated income		207,644
Total general fund appropriation		\$ 597,554
Subdivision 8.		
	NORTH CENTRAL RESEARCH CENTER	
Salaries and wages		\$ 430,686
Operating expenses		244,000
Equipment		42,000
Capital improvements		40,000
Total all funds		\$ 756,686
Less estimated income		369,100
Total general fund appropriation		\$ 387,586
Subdivision 9.		
	WILLISTON RESEARCH CENTER	
Salaries and wages		\$ 643,995
Operating expenses		140,800
Equipment		64,900
Capital improvements		4,000
Total all funds		\$ 853,695

Less estimated income	342,000
Total general fund appropriation	\$ 511,695

## Subdivision 10.

## CARRINGTON RESEARCH CENTER

Salaries and wages	\$ 1,181,331
Operating expenses	575,000
Equipment	108,900
Capital improvements	40,000
Total all funds	\$ 1,905,231
Less estimated income	983,837
Total general fund appropriation	\$ 921,394

## Subdivision 11.

## AGRONOMY SEED FARM

Salaries and wages	\$ 260,636
Operating expenses	374,100
Equipment	157,000
Capital improvements	23,000
Total special funds appropriation	\$ 814,736

## Subdivision 12.

## LAND RECLAMATION RESEARCH CENTER

Salaries and wages	\$ 1,254,689
Operating expenses	130,000
Equipment	50,000
Total special funds appropriation	\$ 1,434,689
Grand total general fund appropriation H.B. 1005	\$37,608,159
Grand total special funds appropriation H.B. 1005	\$33,554,011
Grand total all funds appropriation H.B. 1005	\$71,162,170

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, and the North Dakota state university extension service, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the operating fund must remain in such fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of such moneys except those received from the federal government or as gifts from private sources, must be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 30, 1991, exceeds the estimated income for the biennium ending June 30, 1993.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items for each agency included in section 1 of this Act and shall notify the office of management and budget within ten days following such transfer.

SECTION 4. TRANSFER AUTHORITY. Upon approval of the state board of higher education and the emergency commission, the director of the North Dakota agricultural experiment station may transfer appropriation authority between agencies included in subdivisions 2 through 12 of section 1 of this Act.

**SECTION 5. INTENT.** It is the intent of the legislative assembly that the funds appropriated for the land reclamation research center be used for the following research projects, and that these projects be concluded and final reports issued not later than June 30, 1993.

1. Determine the effect of postmine topography and soils on soil moisture levels and yield on reclaimed prime farmland; and
2. Determine the relation of soil properties and topography to the characteristics of vegetation on reclaimed rangeland.

The following projects in progress shall be concluded to the extent possible and all data collected shall be summarized and reports issued not later than June 30, 1993:

1. Determine the minimum vegetation ground cover necessary for erosion control on reclaimed land;
2. Evaluate the predictability of regraded soil quality based on overburden quality;
3. Determine the effect of reclamation techniques on soil compaction and soil productivity; and
4. Develop criteria for evaluating reclamation success for bond release based on vegetative reestablishment and soil parameters.

In addition, it is the intent of the legislative assembly that the land reclamation research center file an annual report with the legislative council, the public service commission, and the industrial commission on June 30, 1991, June 30, 1992, and thereafter as specified by the commission. The annual report must contain a description and analysis of the conclusions reached from each reclamation research project that has been conducted to date for the preceding fiscal year as well as a brief description and analysis of any tentative conclusions reached from all ongoing projects. The annual report of the land reclamation research center must also include any recommendations it may have for reducing unnecessary and duplicative regulatory costs that do not contribute to effective reclamation practices. For any new reclamation research project to be approved for funding, each proposed project must meet all of the following criteria:

1. Development of data and conclusions that will assist in returning the land to its original or better productivity;
2. Development of data and conclusions that will assist in returning the land to an approved postmining land use as soon as possible; and
3. Development of data and conclusions that will reduce unnecessary regulatory costs and assist in effectively reclaiming the land to its original or better productivity.

**SECTION 6. STORAGE FACILITIES.** Structures for storage of agricultural products may be authorized for construction by the state board of higher education when such structures do not exceed \$50,000 in cost.



SECTION 7. LAND RECLAMATION RESEARCH CENTER - FUNDING. The amount of \$623,533, included in the special funds appropriation line item in subdivision 12 of section 1 of this Act, is from funds to be transferred by the industrial commission from the lignite research fund for the biennium beginning July 1, 1991, and ending June 30, 1993, as provided in House Bill No. 1019. In addition to the \$623,533 referred to above, the special funds appropriation line item in subdivision 12 of section 1 includes \$136,080 of funds that the industrial commission may transfer from the lignite research fund to the land reclamation research center during the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 6

HOUSE BILL NO. 1006  
(Committee on Appropriations)

### DEPARTMENT OF HEALTH

AN ACT making an appropriation for defraying the expenses of the department of health and consolidated laboratories of the state of North Dakota; to provide an appropriation from the solid waste management fund; and to provide for an appropriation from the abandoned motor vehicle disposal fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of health and consolidated laboratories of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$18,921,264
Information services	681,381
Operating expenses	21,212,609
Equipment	715,900
Grants, benefits, and claims	9,527,504
Abandoned motor vehicle	400,000
Diabetes control project	35,000
Galactosemia equipment and testing program	280,000
Rural water	1,979,406
Total all funds	\$53,753,064
Less estimated income	39,565,105
Total general fund appropriation	\$14,187,959

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 1 of this Act includes \$400,000 which the department of health and consolidated laboratories may spend from the abandoned motor vehicle disposal fund pursuant to section 39-26-11 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in section 1 of this Act includes \$220,000 which the department of health and consolidated laboratories may spend from the solid waste management fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. GALACTOSEMIA TESTING PROGRAM FUNDING. The estimated income line item in section 1 of this Act includes \$280,000 which the department of health and consolidated laboratories may spend from the department of health and consolidated laboratories operating account for the galactosemia testing program for the biennium beginning July 1, 1991, and ending June 30, 1993, as appropriated in section 1 of this Act.

Approved April 16, 1991  
Filed April 18, 1991

**CHAPTER 7**

HOUSE BILL NO. 1007  
(Committee on Appropriations)

**INDIAN AFFAIRS COMMISSION**

AN ACT making an appropriation for defraying the expenses of the Indian affairs commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$112,720
Information services	4,000
Operating expenses	24,150
Grants, benefits, and claims	<u>385,000</u>
Total general fund appropriation	\$525,870

SECTION 2. ALCOHOL AND DRUG ABUSE EDUCATION PROGRAM - EXPENDITURE LIMITATIONS. The moneys appropriated in the grants line item for the native American alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 8

HOUSE BILL NO. 1008  
(Committee on Appropriations)

### AERONAUTICS COMMISSION

AN ACT making an appropriation for defraying the expenses of the aeronautics commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$ 386,989
Information services	12,216
Operating expenses	758,708
Equipment	106,000
Capital improvements	300,000
Grants, benefits, and claims	1,531,000
Total all funds	\$3,094,913
Less estimated income	2,801,697
Total general fund appropriation	\$ 293,216

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 9

HOUSE BILL NO. 1009  
(Committee on Appropriations)

## VETERANS' HOME AND VETERANS' AFFAIRS

AN ACT making an appropriation for defraying the expenses of the veterans' home and the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$3,228,004
Operating expenses	1,138,401
Equipment	96,903
Capital improvements	100,000
Nursing home startup cost	300,000
Total all funds	\$4,863,308
Less estimated income	3,282,463
Total general fund appropriation	\$1,580,845

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	\$ 315,381
Information services	3,800
Operating expenses	71,302
Equipment	10,000
Total all funds	\$ 400,483
Less estimated income	\$ 10,000
Total general fund appropriation	\$ 390,483
Grand total general funds appropriated H.B. 1009	\$1,971,328
Grand total special funds appropriated H.B. 1009	\$3,292,463
Grand total all funds appropriated H.B. 1009	\$5,263,791

SECTION 2. VETERANS' POSTWAR TRUST FUND EARNINGS. The amount of \$246,876, or so much thereof as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from interest earnings of the veterans' postwar trust fund for the purpose of defraying costs related to the completion of the nursing home facility of \$100,000, equipment purchases of \$76,876, and operating expenses of \$70,000.

SECTION 3. NURSING HOME STARTUP COSTS. The amount of \$300,000, or so much thereof as may be necessary, included in the nursing home startup costs line item in subdivision 1 of section 1 of this Act is from the veterans' home improvement fund for the purpose of defraying startup costs of the nursing home facility.

SECTION 4. VETERANS' POSTWAR TRUST FUND EARNINGS. The amount of \$10,000, or so much thereof as may be necessary, included in the estimated income line item in subdivision 2 of section 1 of this Act is from interest earnings of the veterans' postwar trust fund for the purpose of equipment purchases.

Approved April 8, 1991  
Filed April 8, 1991

**CHAPTER 10**

HOUSE BILL NO. 1010  
(Committee on Appropriations)

**BANKING AND FINANCIAL INSTITUTIONS**

AN ACT making an appropriation for defraying the expenses of the department of banking and financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,745,644
Information services	20,286
Operating expenses	482,361
Equipment	18,400
Contingency - banking and financial institutions	<u>15,000</u>
Total appropriation from the financial institutions regulatory fund	\$2,281,691

Approved March 18, 1991  
Filed March 19, 1991

CHAPTER 11

HOUSE BILL NO. 1011  
(Committee on Appropriations)

SECURITIES COMMISSIONER

AN ACT making an appropriation for defraying the expenses of the securities commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$479,812
Information services	14,520
Operating expenses	56,736
Equipment	<u>8,500</u>
Total general fund appropriation	\$559,568

Approved April 2, 1991  
Filed April 4, 1991



**CHAPTER 12**

HOUSE BILL NO. 1012  
(Committee on Appropriations)

**MILK STABILIZATION BOARD**

AN ACT making an appropriation for defraying the expenses of the milk stabilization board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the milk stabilization fund in the state treasury, not otherwise appropriated, to the milk stabilization board for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$342,553
Information services	6,200
Operating expenses	136,256
Equipment	2,544
Contingency	<u>5,000</u>
Total appropriation from milk stabilization fund	\$492,553

Approved March 18, 1991  
Filed March 19, 1991

**CHAPTER 13**

HOUSE BILL NO. 1013  
(Committee on Appropriations)

**STATE FAIR ASSOCIATION**

AN ACT making an appropriation for defraying the expenses of the state fair association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Capital improvements	\$210,000
Premiums	<u>350,000</u>
Total general fund appropriation	\$560,000

Approved April 16, 1991

Filed April 18, 1991

**CHAPTER 14**

HOUSE BILL NO. 1014  
 (Committee on Appropriations)

**COUNCIL ON THE ARTS**

AN ACT making an appropriation for defraying the expenses of the council on the arts; and providing for an appropriation of funds from the cultural endowment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$ 328,332
Information services	5,665
Operating expenses	153,143
Equipment	5,700
Grants, benefits, and claims	1,299,516
Cultural endowment	8,516
Total all funds	<u>\$1,800,872</u>
Less estimated income	<u>1,223,609</u>
Total general fund appropriation	\$ 577,263

SECTION 2. APPROPRIATION. All income from the cultural endowment fund is hereby appropriated for the furthering of the cultural arts in the state for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. ADDITIONAL INCOME. All income of the council on the arts in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the council on the arts for the biennium beginning July 1, 1991, and ending June 30, 1993, and may be spent only upon authorization of the emergency commission.

Approved April 16, 1991  
 Filed April 18, 1991

## CHAPTER 15

HOUSE BILL NO. 1015  
(Committee on Appropriations)

### HIGHWAY PATROL

AN ACT making an appropriation for defraying the expenses of the highway patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys not otherwise appropriated, from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$14,707,626
Information services	275,606
Operating expenses	3,465,277
Equipment	144,508
Capital improvements	30,000
Total special funds appropriation	\$18,623,017

SECTION 2. SPECIAL FUNDS. The total special funds appropriation line item in section 1 of this Act includes \$18,062,359, or so much thereof as may be necessary, from the state highway fund for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. PAYMENTS TO HIGHWAY PATROLMEN. Each patrolman of the state highway patrol shall receive from funds appropriated in the salaries and wages line item in section 1 of this Act an amount not to exceed one hundred twenty dollars per month for the biennium beginning July 1, 1991, and ending June 30, 1993. Such payments shall be in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. Such amounts shall be paid without the presentation of receipts or other memoranda at the time and in the same manner as salaries of members of the highway patrol are paid.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 16

HOUSE BILL NO. 1016  
(Committee on Appropriations)

### DEPARTMENT OF TRANSPORTATION

AN ACT making an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to the assignment of motor vehicle number plates; to provide for a contingent temporary transfer from the petroleum tank release compensation fund; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

TRANSPORTATION OPERATIONS

Salaries and wages	\$ 69,435,365
Information services	2,890,496
Operating expenses	49,474,121
Equipment	5,915,500
Capital improvements	331,785,000
Grants, benefits, and claims	8,248,327
Public transportation	1,340,000
Total special funds appropriation	<u>5469,088,809</u>

Subdivision 2.

MOTOR VEHICLE

Salaries and wages	\$ 2,430,869
Information services	753,332
Operating expenses	1,840,000
Equipment	60,488
Contingency fund	45,000
License plates and tabs	1,800,000
Total special funds appropriation	<u>\$ 6,929,689</u>

Subdivision 3.

FLEET SERVICES

Salaries and wages	\$ 964,015
Information services	210,000
Operating expenses	6,560,740
Equipment	<u>9,860,086</u>

Total special funds appropriation	\$ 17,594,841
Grand total special funds appropriation H.B. 1016	\$499,689,851

SECTION 2. TRANSFER AUTHORITY. Upon the approval of the budget section the director of the department of transportation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. FLEET SERVICES OPERATING FUND - ADDITIONAL INCOME - TRANSFER. The department of transportation shall establish a fleet services operating fund to be used for the procurement and maintenance of fleet services. The funds collected from various agencies must be deposited in the operating fund and must be expended in accordance with legislative appropriations. Income in excess of the amounts appropriated for operating expenses and equipment in subdivision 3 of section 1 of this Act may be spent within the provisions of Senate Bill No. 2168 for purposes of those items. The director of the department of transportation may transfer \$2,500,000, or so much thereof as may be necessary, from the operating fund to the highway fund and may transfer appropriation authority of \$2,500,000 from the equipment line item in subdivision 3 of section 1 of this Act to the capital improvements line item in subdivision 1 of section 1 of this Act for the purpose of matching federal funds for highway construction.

SECTION 4. LEGISLATIVE INTENT - REVIEW OF FEDERAL MATCHING NEEDS. It is the intent of the legislative assembly that the reconvened fifty-second legislative assembly address the need for providing additional state funding via the motor vehicle fuel tax to the department of transportation for the purpose of matching federal funds for highway maintenance, construction, and reconstruction for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. LAKE OAHE BRIDGE PROJECT. The capital improvements line item in subdivision 1 of section 1 of this Act includes \$22,500,000 of federal funds for the Lake Oahe bridge project. The state's matching amount for the project of \$2,250,000 is from funds appropriated from the highway fund included in the capital improvements line item in subdivision 1 of section 1 of this Act and may only be spent when the federal funds are available to be spent for the project.

SECTION 6. CONTINGENT APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated, subject to approval of the budget section of the legislative council, out of any moneys in the state treasury, not otherwise appropriated, from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.		
	TRANSPORTATION OPERATIONS	
Salaries and wages		\$1,580,863
Operating expenses		4,294,649
Total special funds appropriation		<u>\$5,875,512</u>
Subdivision 2.		
	FLEET SERVICES	
Operating expenses		<u>\$201,000</u>

Total special funds appropriation \$201,000

SECTION 7. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Assignment of motor vehicle number plates. Motor vehicle number plates may not be assigned as a reward for any political activity, in recognition of any political affiliation or membership in any political party, or on the basis of political favoritism. However, an elected state office may be assigned a single or double digit number on a number plate as requested by that official. The department of transportation shall adopt rules governing the assignment of numbers on motor vehicle number plates in accordance with this section.

SECTION 8. SPECIAL ROAD FUND. Notwithstanding section 24-02-37, the director of the department of transportation may use the moneys in the special road fund for the purpose of matching federal funds for highway maintenance, construction, and reconstruction for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 9. PETROLEUM TANK RELEASE COMPENSATION FUND. If House Bill No. 1439 of the fifty-second legislative assembly does not become effective, the state treasurer, at the request of the director of the department of transportation, shall transfer \$1,000,000, or so much thereof as may be necessary, from the petroleum tank release compensation fund to the highway fund for the purpose of matching federal funds for highway maintenance, construction, and reconstruction for the biennium beginning July 1, 1991, and ending June 30, 1993. An amount equal to all moneys transferred must be paid to the petroleum tank release compensation fund from the highway fund by December 31, 1992.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 17

HOUSE BILL NO. 1017  
(Committee on Appropriations)

### COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT making an appropriation for defraying the expenses of the commissioner of university and school lands; and to provide for an appropriation of funds from the oil and gas impact grant fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from the state lands maintenance fund, in the state treasury, not otherwise appropriated, and other income, to the commissioner of university and school lands for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,340,550
Information services	65,034
Operating expenses	623,664
Equipment	33,200
Grants, benefits, and claims	5,085,086
Contingency fund	50,000
Total special funds appropriation	\$7,197,534

SECTION 2. APPROPRIATION. The amount of \$5,000,000, or so much thereof as may be necessary, included in the salaries and wages, information services, operating expenses, equipment, grants, and estimated income line items in section 1 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and for related administrative expenses for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act nor to the appropriation for coal impact grants in chapter 733 of the 1989 Session Laws of North Dakota.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 18

HOUSE BILL NO. 1018  
(Committee on Appropriations)

### CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT making an appropriation for defraying the expenses of the children's services coordinating committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the children's services coordinating committee for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$ 109,651
Information services	3,503
Operating expenses	223,035
Equipment	3,200
Grants, benefits, and claims	<u>5,069,369</u>
Total all funds	<u>\$5,408,758</u>
Less estimated income	<u>3,303,816</u>
Total general fund appropriation	<u>\$2,104,942</u>

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 19

HOUSE BILL NO. 1019  
(Committee on Appropriations)

## INDUSTRIAL COMMISSION

AN ACT making an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission; to amend and reenact section 57-61-01.5 of the North Dakota Century Code, relating to the lignite research fund; to repeal section 7 of House Bill No. 1005, as approved by the fifty-second legislative assembly, relating to the land reclamation research center; to provide for a bond issuance for a Bismarck state college parking lot; to provide a continuing appropriation for the lignite research fund; and to provide for a lease agreement for the board of higher education to acquire Hastings hall.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

## Subdivision 1.

## INDUSTRIAL COMMISSION

Salaries and wages	\$ 4,356,658
Data processing	208,924
Operating expenses	1,535,897
Equipment	135,293
Grants, benefits, and claims	6,743,807
Administrative contingency	10,000
Lease payments	12,483,264
Oil and gas contingency	50,000
Total all funds	\$ 25,523,843
Less estimated income	25,144,036
Total general fund appropriation	\$ 379,807

## Subdivision 2.

## BANK OF NORTH DAKOTA

Salaries and wages	\$ 11,509,348
Data processing	4,100,109
Operating expenses	5,728,834
Equipment	471,000
Capital improvements	400,000
Contingency	300,000
Total appropriation from Bank of North Dakota fund	\$ 22,509,291

Subdivision 3.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$ 10,174,977
Operating expenses	5,929,164
Emergency fund	250,000
Agriculture promotion	50,000
Total appropriation from mill and elevator fund	<u>\$ 16,404,141</u>

Subdivision 4.

HOUSING FINANCE AGENCY

Salaries and wages	\$ 2,101,429
Data processing	58,400
Operating expenses	771,252
Equipment	50,000
Grants, benefits, and claims	31,100,000
HFA contingency	100,000
Total appropriation from housing finance agency fund	<u>\$ 34,181,081</u>
Grand total general fund appropriation H.B. 1019	\$ 379,807
Grand total special funds appropriation H.B. 1019	<u>\$ 99,088,549</u>
Grand total all funds appropriation H.B. 1019	<u>\$ 99,468,356</u>

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated, with the approval of the emergency commission, funds which may become available to the commission from bonds authorized by law to be issued by the industrial commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. APPROPRIATION. The amount of \$5,532,775, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, may be spent from the lands and minerals trust fund for the purpose of providing funds for the administration of the industrial commission.

SECTION 4. TRANSFER. The industrial commission as reimbursement for administrative expenses may transfer from funds available to the following agencies to the industrial commission operating fund the following amounts during the biennium beginning July 1, 1991, and ending June 30, 1993:

Mill and elevator association	\$ 62,202
Bank of North Dakota	74,593
Housing finance agency	55,048
Municipal bond bank	28,351
Student loan trust	55,048

SECTION 5. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$3,000,000 from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1992.

SECTION 6. CONTINGENCY - EMERGENCY COMMISSION APPROVAL REQUIRED - OIL AND GAS DIVISION. The sums appropriated in subdivision 1 of section 1 of this Act for the oil and gas contingency are appropriated from the lands and

minerals trust fund contingent upon emergency commission approval if funds are required due to an increase in oil and gas exploration or production.

SECTION 7. LIGNITE RESEARCH, DEVELOPMENT AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$1,000,000, or so much thereof as is necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act, is to be spent from the lignite research fund for the purpose of contracting for an independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new jobs and economic growth for the general welfare of North Dakota. Moneys not needed for the purposes stated herein shall be available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 8. AMENDMENT. Section 57-61-01.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-61-01.5. Separate and additional coal severance tax - Lignite research contracts, development, and marketing program - Continuing appropriation - Administration.

1. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, which is hereby created, to be known as the lignite research fund. Moneys in the lignite research fund must be available to the industrial commission for contracts with research facilities within this state. Such moneys must be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research, development, and marketing proposals and entering into contracts under this section the lignite research, development, and marketing program.
2. The state treasurer shall deposit in the lignite research fund, fifty percent of the taxes collected and deposited subsequent to July 1, 1990, in the permanent trust fund established by section 21 of article X of the Constitution of North Dakota and shall, beginning in July 1991, no less than monthly, deposit in the lignite research fund fifty percent of the taxes collected and deposited in the permanent trust fund. All moneys in the lignite research fund as well as any moneys received from federal and private sources for lignite research, development, and marketing, including interest on all such moneys, are hereby appropriated to the industrial commission, and may be spent only within limits of legislative appropriations, for the administration, development,

and funding of the lignite research, development, and marketing program.

SECTION 9. LEGISLATIVE INTENT - LEASE PAYMENTS. The amount of \$12,483,264 included in subdivision 1 of section 1 of this Act in the lease payments line shall be paid from the following funding sources during the biennium beginning July 1, 1991, and ending June 30, 1993:

Higher education institutions	\$ 1,900,000
Capital construction fund's portion of sales, use, and motor vehicle excise taxes	10,306,142
Veterans home improvement fund	<u>277,122</u>
Total	\$12,483,264

The amounts shall be deposited in the capital construction fund and used for payments on the bonds issued by the North Dakota building authority including the 1986 Series A issue for projects at the state developmental center, state hospital, and state penitentiary.

SECTION 10. CAPITAL CONSTRUCTION FUND - BORROWING AUTHORITY. The industrial commission may borrow up to \$2,500,000 from the state general fund for deposit in the capital construction fund during the biennium beginning July 1, 1991, and ending June 30, 1993, for the purpose of making lease payments. Any amounts borrowed from the general fund must be repaid to the general fund prior to June 30, 1993.

SECTION 11. CONTINGENT APPROPRIATION. There is hereby appropriated from the Bank of North Dakota accumulated and undivided profits, not otherwise appropriated, the sum of \$500,000, or so much thereof as may be necessary, to the Bank of North Dakota to be used for profit enhancement programs not anticipated during the fifty-second legislative assembly for the biennium beginning July 1, 1991, and ending June 30, 1993. The amounts can be made available to the Bank of North Dakota only after receiving emergency commission approval.

SECTION 12. LAND RECLAMATION RESEARCH CENTER FUNDING. The amount of \$379,807 included in grants in subdivision 1 of section 1 of this Act shall be made available to the land reclamation research center from the general fund for the biennium beginning July 1, 1991, and ending June 30, 1993, and the amount of \$210,193 included in grants in subdivision 1 of section 1 of this Act must be made available from the lignite research fund for nonmatching grants to maintain the center's core staff for the second year of the 1991-93 biennium. The land reclamation research center must submit bids before receiving additional grant moneys from the lignite research fund.

SECTION 13. APPROPRIATION - HOUSING FINANCE AGENCY. In addition to the amount appropriated to the housing finance agency in subdivision 4 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 14. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in section 1 of this Act includes \$140,000 which the geological survey may spend from the solid waste management fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 15. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - APPROPRIATION. The state board of higher education, in accordance with chapter 15-55, is hereby authorized to issue and sell self-liquidating, tax-exempt bonds in any amount up to, but not exceeding, \$350,000, for the purpose of constructing a revenue-producing parking lot at Bismarck state college. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota. The proceeds from the sale of bonds, or so much thereof as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and equipping of a parking lot. Any unexpended balance from the sale of bonds must be placed in a sinking fund for the retirement of the authorized bonds.

SECTION 16. LEGISLATIVE INTENT - MILL AND ELEVATOR ASSOCIATION. It is the intent of the fifty-second legislative assembly that the mill and elevator association phase out its certified seed grains processing and marketing program.

SECTION 17. BOARD OF HIGHER EDUCATION - LEASE PURCHASE AGREEMENT. The board of higher education may enter into a lease purchase agreement subject to such limitations as may be required by law for the purpose of acquiring title to Hastings hall on the North Dakota state university campus from the North Dakota state seed department beginning July 1, 1992. Terms of the agreement must be approved by the budget section of the legislative council. Moneys to make lease payments must be made within the limits of appropriations made to North Dakota state university.

SECTION 18. REPEAL. Section 7 of House Bill No. 1005, as approved by the fifty-second legislative assembly, is repealed.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 20

HOUSE BILL NO. 1020  
(Committee on Appropriations)

### INTERNATIONAL PEACE GARDEN

AN ACT making an appropriation for defraying the expenses of the international peace garden; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the international peace garden for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Capital improvements	\$ 75,000
Grants, benefits, and claims	<u>383,772</u>
Total general fund appropriation	\$458,772

SECTION 2. PROJECT AUTHORIZATION. The amount of \$55,000 included in the general fund appropriation line item in section 1 of this Act is for the purpose of remodeling the administration building.

SECTION 3. EMERGENCY. The capital improvements line item in section 1 and section 2 of this Act are declared to be emergency measures.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 21

HOUSE BILL NO. 1021  
(Committee on Appropriations)

## CORRECTIONS AND REHABILITATION

AN ACT making an appropriation for defraying the expenses of the department of corrections and rehabilitation; providing for an appropriation from the North Dakota state penitentiary land fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the department of corrections and rehabilitation for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.		
	CENTRAL OFFICE	
Salaries and wages		\$ 444,787
Information services		10,000
Operating expenses		253,248
Institutional medical fees		220,000
Total all funds		\$ 928,035
Less estimated income		200,000
Total general fund appropriation		\$ 728,035
Subdivision 2.		
	JUVENILE COMMUNITY SERVICES	
Salaries and wages		\$ 1,430,659
Information services		45,300
Operating expenses		2,126,090
Equipment		8,200
Grants		150,000
Total all funds		\$ 3,760,249
Less estimated income		1,259,759
Total general fund appropriation		\$ 2,500,490
Subdivision 3.		
	STATE INDUSTRIAL SCHOOL	
Salaries and Wages		\$ 5,019,711
Information services		65,171
Operating expenses		1,361,378
Equipment		51,186
Capital improvements		272,928
Total all funds		\$ 6,770,374
Less estimated income		1,803,828



Total general fund appropriation		\$ 4,966,546
Subdivision 4.		
	STATE PENITENTIARY	
Salaries and wages		\$10,870,900
Information services		99,813
Operating expenses		4,762,574
Equipment		108,750
Capital improvements		2,441,096
Total all funds		<u>\$18,283,133</u>
Less estimated income		2,569,660
Total general fund appropriation		<u>\$15,713,473</u>

Subdivision 5.		
	ROUGH RIDER INDUSTRIES	
Salaries and wages		\$ 1,541,964
Information services		30,000
Operating expenses		5,468,700
Equipment		304,000
Capital improvements		200,000
Total special funds		<u>\$ 7,544,664</u>

Subdivision 6.		
	PAROLE AND PROBATION	
Salaries and wages		\$ 2,547,508
Information services		44,685
Operating expenses		444,135
Equipment		10,157
Total all funds		<u>\$ 3,046,485</u>
Less estimated income		511,622
Total general fund appropriation		<u>\$ 2,534,863</u>

Subdivision 7.		
	PARDON BOARD	
Operating expenses		\$ 1,482
Total general fund appropriation		<u>\$ 1,482</u>
Grand total general fund appropriation H.B. 1021		\$26,444,889
Grand total special funds appropriation H.B. 1021		\$13,889,533
Grand total all funds appropriation H.B. 1021		\$40,334,422

SECTION 2. STATE PENITENTIARY LAND FUND. The amount appropriated for operating expenses and capital improvements in subdivision 4 of section 1 of this Act includes \$425,000 which is from the North Dakota state penitentiary land fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. TRANSFER AUTHORITY. Upon approval of the budget section, the director of the department of corrections and rehabilitation may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 4. ROUGH RIDER INDUSTRIES' OPERATING FUND - BANK OF NORTH DAKOTA. Roughrider industries may establish its own operating fund in the Bank of North Dakota. Interest earned on the roughrider industries' operating fund shall be deposited in the state general fund. Roughrider industries may use its own manufacturing accounting system and must report annually its revenues and expenditures to the office of management and budget

for the purpose of its financial statements being included in the state's comprehensive audited financial statements.

SECTION 5. EMERGENCY. The capital improvements line in subdivision 4 of section 1 of this Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

**CHAPTER 22**

HOUSE BILL NO. 1022  
(Committee on Appropriations)

**JOB SERVICE NORTH DAKOTA**

AN ACT making an appropriation for defraying the expenses of job service North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in special funds in the state treasury, not otherwise appropriated, derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$28,657,487
Operating expenses	6,765,026
Equipment	680,000
Grants, benefits, and claims	<u>10,585,000</u>
Total special funds appropriation	\$46,687,513

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 23

HOUSE BILL NO. 1023  
(Committee on Appropriations)

### PAY EQUITY

AN ACT to provide an appropriation relating to pay equity adjustments; to provide requirements for the expenditure of funds for pay equity adjustments; and to provide for progress reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. EMERGENCY COMMISSION - APPROPRIATION - PAY EQUITY. The emergency commission may approve the expenditures of up to \$2,000,000 of special funds derived from federal funds and other income, which are hereby appropriated for pay equity adjustments during the biennium beginning July 1, 1991, and ending June 30, 1993. This additional spending authority may be approved by the emergency commission upon request of state agencies and institutions, only after the office of management and budget has determined that appropriations made by the fifty-second legislative assembly are insufficient to allow such payments.

SECTION 2. PAY EQUITY IMPLEMENTATION FUND. Any moneys in the pay equity implementation fund created by House Bill No. 1035 of the fifty-first legislative assembly may be disbursed only for pay equity adjustments for persons whose compensation is paid from the state general fund.

SECTION 3. PAY EQUITY ADJUSTMENTS. State agencies and institutions may only make pay equity adjustments during the 1991-93 biennium to the extent moneys are available for such adjustments. Any moneys to be spent from the pay equity fund or pursuant to the special fund appropriation provided by section 1 of this Act may be made only after the office of management and budget determines that sufficient funds are available to pay the pay equity adjustment for the remainder of the biennium, and that other appropriations are insufficient to provide for the payment of approved pay equity adjustments including those relating to work hazards.

SECTION 4. HAZARDOUS CONDITIONS. The central personnel division may only apply hazardous condition adjustments to positions based on severity of hazard and frequency of exposure to hazard.

SECTION 5. LEGISLATIVE COUNCIL - PROGRESS REPORTS. The office of management and budget shall periodically report to the legislative council or its designated committee its progress in determining necessary pay equity adjustments, and its findings resulting therefrom including the cost of full implementation of pay equity recommendations, for the 1993-95 biennium. The legislative council shall report its findings and recommendations together with any legislation required to implement the recommendations, to the fifty-third legislative assembly.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 24

HOUSE BILL NO. 1215  
(Committee on Natural Resources)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### **BELFIELD/BOWMAN PROJECT**

AN ACT to make an appropriation for defraying North Dakota's cost share of the Belfield/Bowman radiation remediation project costs under authority of the Uranium Mill Tailings Radiation Control Act; to provide authorization to the state department of health and consolidated laboratories to negotiate with the department of energy on behalf of the state of North Dakota concerning the Belfield/Bowman radiation remediation project; and to provide authorization to acquire necessary land by purchase or eminent domain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$70,000 to the North Dakota state department of health and consolidated laboratories for a portion of the state's ten percent share of \$140,000 for the Belfield/Bowman radiation remediation project for the biennium beginning July 1, 1991, and ending June 30, 1993. The remaining \$70,000 is the responsibility of Stark and Bowman counties where the remediation activity is occurring.

SECTION 2. Land acquisition. The department of health and consolidated laboratories in consultation with the North Dakota board of university and school lands and the department of transportation may acquire any land, including all mineral rights and improvements by purchase, donation, or condemnation, pursuant to the procedures of chapter 32-15, and other laws governing eminent domain, in fee simple or such easements thereof which the state department of health and consolidated laboratories shall deem necessary for cleanup and remediation of the abandoned uranium processing sites near Belfield and Bowman and providing a permanent disposal site near Bowman. Title to all lands acquired pursuant to this Act must be in the name of the state of North Dakota.

SECTION 3. Transfer or sale of acquired lands. The state department of health and consolidated laboratories in consultation with the North Dakota board of university and school lands and the department of transportation may transfer land including all mineral rights and improvements acquired pursuant to this Act to either the United States where provided by federal law or an appropriate state agency or political subdivision of the state. Where land acquired pursuant to this Act is deemed suitable for use as it was used prior to contamination, the department of health and consolidated laboratories may sell such land back to the owner it was acquired from at not less than fair market value. If the owner does not desire to repurchase the land, the department of health and consolidated laboratories may sell such land by

public sale under a system of competitive bidding, at not less than fair market value, pursuant to the provisions of laws applicable to the sale of state-owned land.

SECTION 4. Intent and purpose. The Uranium Mill Tailings Radiation Control Act of 1978 [Pub. L. 95-604] was enacted to provide a mechanism for federal and state cooperation and funding to clean up abandoned uranium tailings piles needing reclamation in order to protect the health and safety of the general public. On November 8, 1979, the department of energy designated twenty-four "processing sites" throughout the United States, including two in North Dakota near Belfield and Bowman. The Belfield/Bowman project is a multiannual project that began in the 1987-89 biennium and will be completed in the 1993-95 biennium. The project costs for all uranium radiation cleanup projects are cost-shared at a ninety percent department of energy and ten percent state matching ratio. The costs related to the Belfield/Bowman radiation remediation project through the 1993-95 biennium are projected by the department of energy as follows:

Remediation Construction Costs:

Estimated Total Cost	Estimated 90% Federal Share	Estimated 10% State Share
\$11,280,288	\$10,152,259	\$1,128,029

Approved April 8, 1991  
Filed April 8, 1991

**CHAPTER 25**

HOUSE BILL NO. 1391  
(Martinson, Clayburgh, Gerntholz, Belter)

**NATIONAL GUARD TUITION TRUST FUND**

AN ACT to provide an appropriation to the national guard tuition trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much thereof as may be necessary, to the national guard tuition trust fund for the tuition assistance program for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 26

HOUSE BILL NO. 1416  
(Representatives R. Anderson, Thompson)  
(Senator Meyer)

### **PUBLIC LAND ECONOMIC BENEFITS STUDY**

AN ACT providing an appropriation to North Dakota state university to provide funds for a study to determine the economic benefits to North Dakota from public lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund in the state treasury, not otherwise appropriated, the sum of \$15,000, or so much thereof as may be necessary, to North Dakota state university for the funding of a study to determine the economic benefits to North Dakota from public lands. North Dakota state university shall have reports available on its completed study by July 1, 1992, for distribution to members of the Fifty-second Legislative Assembly.

Approved April 2, 1991  
Filed April 4, 1991



## CHAPTER 27

HOUSE BILL NO. 1511  
(Representatives Larson, Scherber)  
(Senators Mathern, Thane)

### HUMAN SERVICE CENTER LEASE

AN ACT to direct the department of human services to negotiate a new lease; to authorize the industrial commission, acting as the state building authority, to issue loan notes to make funds available for the acquisition of lands and the construction and equipping of a regional human service center facility or the purchase of an existing facility; to provide for the termination of a current lease; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. CANCELLATION AND RENEGOTIATION OF LEASE.

1. The department of human services shall furnish to the landlord, on or before April 1, 1991, written notice of cancellation of the real estate lease, entered into between red river human services foundation and the state of North Dakota, department of human services, designated as contract number 05-123, relating to the premises and office space in the former first national bank and trust company building located at 15 Broadway, Fargo, North Dakota, and currently used to house the southeast human service center. In order to permit the department of human services to cancel that lease, under the cancellation terms provided for in that lease, insufficient funds have been provided by legislative appropriation for rent of human service facilities within North Dakota during the entire biennial period ending June 30, 1993.
2. The department of human services shall attempt to negotiate a new lease with the red river human services foundation to be executed and effective no later than Friday, November 1, 1991. The lease to be negotiated must be based on the model lease used by the department as the basis for its leases for other regional human service center sites, specifically running for a term ending at the end of each fiscal biennium subject to renewal by the department. The negotiation required by this subsection must be based on a detailed accounting report to be furnished to the department of human services by red river human services foundation. The detailed accounting report must be verified by a certified public accountant and showing, in detail, for the most recent fiscal year of the foundation, all foundation expenditures, salaries paid to all foundation employees, all foundation revenues detailed by revenue source, a listing of all outstanding debt, and a listing of the amounts of any allocable foundation costs allocated to each foundation activity.

SECTION 2. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, shall determine whether it is more cost effective to purchase an existing building or construct a new facility for the regional human service center in or near the city of Fargo. The industrial commission shall arrange for the funding of the purchase of an existing facility or for the acquisition of land and the erection of improvements, including furniture and equipment, on that land for the purpose of housing that regional human service center, hereby declared to be in the public interest, through the issuance of loan notes, under North Dakota Century Code chapter 54-17.2, during the period beginning November 1, 1991, and ending June 30, 1993. The industrial commission may offer loan notes issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current market interest rates for comparable loan notes purchased by the Bank of North Dakota. The proceeds of the loan notes and other available funds are hereby appropriated during the biennium beginning July 1, 1991, and ending June 30, 1993, for the acquisition of suitable real property or the construction of improvements, or both, including furniture and equipment, for that human service center. The construction and acquisition funds may not exceed \$2,475,000.

The industrial commission shall issue loan notes authorized under this section with the condition that the payments need not begin until July 1, 1993. This authority of the industrial commission to issue loan notes ends on June 30, 1993, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act, and to comply with any covenants entered into before that date.

SECTION 3. CONTINGENT EFFECTIVE DATE. If the department of human services is able to negotiate a lease pursuant to subsection 2 of section 1 of this Act which is satisfactory to the executive director of the department and the attorney general, then section 2 of this Act is of no force and effect. The executive director and the attorney general shall approve and find satisfactory any lease that provides profit to the landlord of three percent or less per year. By November 1, 1991, the attorney general shall certify to the industrial commission that a satisfactory lease has been negotiated and executed pursuant to subsection 2 of section 1 of this Act or that such is not the case.

Approved April 2, 1991  
Filed April 4, 1991

**CHAPTER 28**

SENATE BILL NO. 2001  
(Committee on Appropriations)

**ELECTED OFFICIALS**

AN ACT making an appropriation for defraying the expenses of various elected state officials and the state firemen's association; to create and enact two new sections to chapter 53-06.1 of the North Dakota Century Code, relating to the establishment of a state gaming commission; to amend and reenact sections 4-01-21, 26.1-01-09, subsection 2 of section 27-20-49, sections 34-05-01.2, 39-01-02, 49-01-05, 53-06.1-01, 53-06.1-03, 53-06.1-06, 53-06.1-12, 53-06.1-12.1, 53-06.1-12.2, 53-06.1-13, 53-06.1-14, 53-06.1-17, 54-07-04, 54-08-03, 54-09-05, 54-10-10, 54-11-13, 54-12-11, 57-01-04, 57-39.2-26.1, and 57-58-01 of the North Dakota Century Code and section 54 of Senate Bill No. 2058, as approved by the fifty-second legislative assembly, relating to motor vehicles owned or leased by the state, to the salaries of the commissioner of agriculture, commissioner of insurance, commissioner of labor, public service commissioners, governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, tax commissioner, to prosecution witness fees paid by the attorney general, to the state aid distribution fund, to definitions and the conducting of games of chance, and to the appropriation for the science and technology corporation; to provide a statement of legislative intent; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income the sums as hereinafter provided to the various elected officials and the state firemen's association for the purpose of defraying the expenses of the various elected officials and the state firemen's association of the state of North Dakota, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

GOVERNOR'S OFFICE

Salaries and wages	\$ 1,184,856
Information services	52,500
Operating expenses	291,821
Equipment	7,845
Contingency	7,000
President electors	942
ND-Sask-Man commission	4,000
Yellow-Missouri-Fort Union commission	5,239
Governor's transition in	10,000
Governor's transition out	10,000

Rough rider awards	2,400
Total general fund appropriation	<u>\$ 1,576,603</u>

## Subdivision 2.

## LIEUTENANT GOVERNOR

Salaries and wages	\$ 246,632
Information services	868
Operating expenses	7,132
Equipment	1,300
Contingency	6,893
Total general fund appropriation	<u>\$ 262,825</u>

## Subdivision 3.

## SECRETARY OF STATE

Salaries and wages	\$ 1,000,338
Information services	27,100
Operating expenses	330,390
Equipment	56,600
Public printing	311,543
Petition review	17,000
Total general fund appropriation	<u>\$ 1,742,971</u>

## Subdivision 4.

## ATTORNEY GENERAL

Salaries and wages	\$10,199,243
Information services	452,877
Operating expenses	2,084,412
Controlled substances board	4,000
Equipment	314,949
Arrest and return of fugitives	34,376
Grants, benefits, and claims	4,530,000
ARC legal fees	38,250
Gaming commission	20,000
State employee defense	250,000
Litigation fees	118,324
Total all funds	<u>\$18,046,431</u>
Less estimated income	9,406,407
Total general fund appropriation	<u>\$ 8,640,024</u>

## Subdivision 5.

## STATE AUDITOR

Salaries and wages	\$ 4,566,044
Information services	115,770
Operating expenses	482,637
Equipment	25,500
Total all funds	<u>\$ 5,189,951</u>
Less estimated income	1,919,733
Total general fund appropriation	<u>\$ 3,270,218</u>

## Subdivision 6.

## STATE TREASURER

Salaries and wages	\$ 534,417
Information services	147,100
Operating expenses	56,307
Equipment	4,837
Veterans postwar trust fund	1,575,005
Total all funds	<u>\$ 2,317,666</u>

Less estimated income	5,000
Total general fund appropriation	<u>\$ 2,312,666</u>

## Subdivision 7.

## STATE TAX COMMISSIONER

Salaries and wages	\$ 9,838,283
Information services	1,620,374
Operating expenses	2,037,344
Equipment	114,920
Witness fee contingency	180,000
City sales administrative funds	400,000
Total all funds	<u>\$14,190,921</u>
Less estimated income	400,000
Total general fund appropriation	<u>\$13,790,921</u>

## Subdivision 8.

## LABOR COMMISSIONER

Salaries and wages	\$ 484,039
Information services	16,856
Operating expenses	63,831
Equipment	16,832
Total all funds	<u>\$ 581,558</u>
Less estimated income	43,000
Total general fund appropriation	<u>\$ 538,558</u>

## Subdivision 9.

## PUBLIC SERVICE COMMISSION

Salaries and wages	\$ 4,174,559
Information services	192,700
Operating expenses	3,517,321
Equipment	96,600
Total all funds	<u>\$ 7,981,180</u>
Less estimated income	4,494,293
Total general fund appropriation	<u>\$ 3,486,887</u>

## Subdivision 10.

## AGRICULTURE COMMISSIONER

Salaries and wages	\$ 2,351,112
Information services	101,224
Operating expenses	1,402,922
Equipment	33,531
Ag in the classroom	25,000
Waterbank program	50,000
Pride of Dakota	150,000
Leafy spurge control	458,368
Agriculture mediation services	1,792,037
Total all funds	<u>\$ 6,364,194</u>
Less estimated income	1,806,279
Total general fund appropriation	<u>\$ 4,557,915</u>

## Subdivision 11.

## INSURANCE COMMISSIONER

Salaries and wages	\$ 2,674,087
Information services	109,243
Operating expenses	655,153
Equipment	19,609
Total special funds appropriation	<u>\$ 3,458,092</u>

## Subdivision 12.

## STATE FIREMEN'S ASSOCIATION

Grants, benefits, and claims	\$ 55,000
Total appropriation from the state fire and tornado fund	\$ 55,000
Grand total general fund appropriation S.B. 2001	\$40,454,588
Grand total special funds appropriation S.B. 2001	\$21,607,804
Grand total all funds S.B. 2001	\$62,062,392

SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office is hereby authorized to receive and expend any federal or private funds which are hereby appropriated that become available during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. FIRE AND TORNADO FUND - ATTORNEY GENERAL. The appropriation for the attorney general in subdivision 4 of section 1 of this Act, includes \$624,393, or so much thereof as may be necessary, from the state fire and tornado fund for the purpose of defraying the expenses related to the state fire marshal program including the hazardous material control officer.

SECTION 4. INCOME AUTHORIZATION - TAX COMMISSIONER. Notwithstanding section 57-01-02.1 or any other provision to the contrary, income of up to \$400,000 received from administrative fees generated through tax collection agreements with political subdivisions and Indian tribes initiating taxes during the biennium ending June 30, 1993, will be deposited in the tax commissioner's operating fund. The maximum of \$400,000 authorized in this section for administrative fees may include income of up to \$25,000 collected by the tax commissioner under House Bill No. 1061, as approved by the fifty-second legislative assembly. All fees collected over \$400,000 will be deposited in the general fund.

SECTION 5. TRANSFER - GENERAL FUND. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel taxes revenue, collected pursuant to section 57-43.1-02, the sum of \$988,904 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of the respective tax acts.

SECTION 6. ASSETS FORFEITURE FUND - ATTORNEY GENERAL. The appropriation for the attorney general in subdivision 4 of section 1 of this Act, includes \$36,000, or so much thereof as may be necessary, from the assets forfeiture fund.

SECTION 7. BONDING FUND - INSURANCE COMMISSIONER. The appropriation for the insurance commissioner included in subdivision 11 of section 1 of this Act includes \$15,780, or so much thereof as may be necessary, from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 8. FIRE AND TORNADO FUND - INSURANCE COMMISSIONER. The appropriation for the insurance commissioner included in subdivision 11 of section 1 of this Act includes \$295,866, or so much thereof as may be necessary, from the state fire and tornado fund to pay fire and tornado administrative expenses for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 9. UNSATISFIED JUDGMENT FUND - INSURANCE COMMISSIONER. The appropriation for the insurance commissioner included in subdivision 11 of section 1 of this Act includes \$91,619, or so much thereof as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment administrative expenses for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 10. BONDING FUND - ATTORNEY GENERAL. The appropriation for the attorney general included in subdivision 4 of section 1 of this Act includes \$250,000, or so much thereof as may be necessary, from the state bonding fund for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1991, and ending June 30, 1993, to approve the expenditure of the funds from the state bonding fund appropriated in subdivision 4 of section 1 of this Act to the extent necessary and based upon applications by the attorney general. Funds expended by the attorney general for state employee defense must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-third legislative assembly.

SECTION 11. COLLECTIONS - PUBLIC SERVICE COMMISSION. Notwithstanding any other provisions of law, up to \$26,602 in funds generated by the public service commission due to oil and gas meter monitoring responsibilities for the period beginning July 1, 1991, and ending June 30, 1993, is included in subdivision 9 of section 1 of this Act as estimated income. Any amounts in excess of \$26,602 shall be deposited in the general fund.

SECTION 12. COLLECTIONS - ATTORNEY GENERAL. Notwithstanding any other provisions of law, up to \$15,000 in revenues collected from fees charged for gaming law and administrative rules manuals published by the attorney general for the period beginning July 1, 1991, and ending June 30, 1993, is included in subdivision 4 of section 1 of this Act as estimated income.

SECTION 13. COLLECTIONS - STATE AUDITOR. Notwithstanding any other provisions of law, up to \$1,351,844 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 1991, and ending June 30, 1993, is included in subdivision 5 of section 1 of this Act as estimated income. Any collections in excess of expenditures shall be deposited in the state auditor operating account and made available for appropriation after June 30, 1993.

\* SECTION 14. AMENDMENT. Section 4-01-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

\*\* SECTION 15. AMENDMENT. Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

\* NOTE: Section 4-01-21 was also amended by section 3 of Senate Bill No. 2594, chapter 53.

\*\* NOTE: Section 26.1-01-09 was also amended by section 5 of Senate Bill No. 2594, chapter 53.

SECTION 16. AMENDMENT. Subsection 2 of section 27-20-49 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The supreme court shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and reasonable compensation for a guardian ad litem. The attorney general shall pay the ~~expense of service of summons, notices, subpoenas,~~ travel expense of witnesses, ~~and other like expenses~~ incurred in the proceedings under this chapter. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be borne by that state agency at the state mileage rate excluding meals and lodging.

\* SECTION 17. AMENDMENT. Section 34-05-01.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-01.2. Department of labor to be administered by commissioner of labor. The department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. Following his election, the term of the commissioner of labor commences on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is forty-nine thousand ~~three~~ nine hundred dollars through June 30, 1992, and fifty-one thousand two hundred seventy-two dollars thereafter.

\*\* SECTION 18. AMENDMENT. Section 39-01-02 of the 1989 Supplement to the North Dakota Century Code as amended in section 1 of House Bill No. 1167, as approved by the fifty-second legislative assembly, is amended and reenacted as follows:

39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty. All motor vehicles owned and operated by the state, except vehicles under the control of the central vehicle management system and the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required height. The color of the lettering must be in clear and sharp contrast to the background. The state auditor shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section. The above requirements do not apply to vehicles operated by the attorney general's office, the highway patrol, or vehicles used principally in juvenile, parole, and placement service. The central vehicle management system vehicles must display a window decal designed by the director. The state highway patrol and all peace officers of this state shall enforce this section.

\* NOTE: Section 34-05-01.2 was also amended by section 8 of Senate Bill No. 2594, chapter 53.

\*\* NOTE: Section 39-01-02 was also amended by section 1 of House Bill No. 1167, chapter 394, and by section 12 of Senate Bill No. 2245, chapter 592.



\* SECTION 19. AMENDMENT. Section 49-01-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~forty-nine~~ fifty-one thousand ~~three~~ two hundred ~~seventy-two~~ dollars. All fees received or charged by any such commissioner for any act or service rendered in any official capacity, shall be accounted for and paid over by him monthly to the state treasurer and shall be credited to the general fund of the state.

\*\* SECTION 20. AMENDMENT. Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions.

1. "Adjusted gross proceeds" means, except in the case of the games of draw poker and stud poker authorized under section 53-06.1-07.2, gross proceeds less cash prizes or the price of merchandise prizes. In the games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the eligible organization.
2. "Bona fide guest" means a person who is not a member of an eligible organization, but who is allowed to use the facilities of the organization when invited by a member or the organization in accordance with the eligible organization's bylaws, articles of incorporation, charter, rules, or other written statement.
3. "Charitable gaming ticket" means the game piece used in pull tab games or jar ticket games.
4. "Charitable organization" means any nonprofit organization operated for the relief of poverty, distress, or other condition of public concern within this state, which has been so engaged within this state for two years.
5. "Civic and service club" means any branch, lodge, or chapter of a nonprofit national or state organization which is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose within this state, which shall have existed in this state for two years. "Civic and service club" also means a similar local nonprofit organization, not affiliated with a state or national organization, which is recognized by resolution adopted by the governing body of the city in which the organization conducts its principal activities, or by the governing body of a county if such organization conducts its principal activities outside the limits of a city but within a county. Such club shall have existed in this state for two years.
6. "Commission" means the state gaming commission.
7. "Distributor" means a person, firm, corporation, association, or organization which sells, markets, or otherwise distributes raffle tickets, bingo equipment, or any other implements of gambling usable in the lawful conduct of games of chance under this chapter, to an organization licensed or authorized to conduct such games of chance under this chapter. "Distributor" does not include a

\* NOTE: Section 49-01-05 was also amended by section 9 of Senate Bill No. 2594, chapter 53.

\*\* NOTE: Section 53-06.1-01 was also amended by section 1 of House Bill No. 1050, chapter 547; by section 1 of Senate Bill No. 2063, chapter 546; and by section 1 of Senate Bill No. 2219, chapter 545.

resident printer who prints raffle tickets at the request of a licensed or authorized organization, and who sells or otherwise distributes such raffle tickets to such organization.

- ~~7-~~ 8. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:
- a. To the extent used for purposes enumerated in subdivisions c through j, uses benefiting those organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.
  - b. To the extent used for purposes enumerated in subdivisions c through j, uses benefiting an organization registered with the North Dakota secretary of state under chapter 50-22.
  - c. Uses benefiting an indefinite number of persons either by bringing them under the influence of education, cultural programs, or religion or relieving them of disease, suffering, or constraint.
  - d. Fraternal uses specified by an organization's constitution, charter, or bylaws not of direct benefit to the eligible organization or any member thereof.
  - e. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof.
  - f. The erection or maintenance of public buildings or works.
  - g. Uses otherwise lessening the burden of government.
  - h. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
  - i. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
  - j. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless

it is used exclusively for one or more of the stated uses. Uses do not include any activities consisting of attempts to influence legislation, promote or oppose referendums or initiatives, or participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office.

- ~~8-~~ 9. "Educational organization" means any nonprofit public or private elementary or secondary school, two-year or four-year college, or university in this state which has been in existence for two years.
- ~~9-~~ 10. "Eligible organization" means bona fide nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and other public-spirited organizations as defined by this chapter, which may be licensed by the attorney general or authorized by the governing body of a city or county to conduct games of chance under this chapter.
- ~~10-~~ 11. "Entire net proceeds" or "net proceeds" means the adjusted gross proceeds less such expenses, charges, fees, taxes, and deductions as are specifically authorized under this chapter.
- ~~11-~~ 12. "Fraternal organization" means a nonprofit organization within this state, except college and high school fraternities, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. Such organization shall have existed within this state for two years.
- ~~12-~~ 13. "Gross proceeds" means all moneys collected or received from games of chance and admissions thereto.
- ~~13-~~ 14. "Licensee" means an eligible organization licensed under ~~the provisions~~ of this chapter.
- ~~14-~~ 15. "Licensing authority" means the attorney general.
- ~~15-~~ 16. "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of games of chance under this chapter. "Manufacturer" does not include a resident printer who prints raffle tickets at the request of a licensed or authorized organization, and who sells or otherwise distributes such raffle tickets to such an organization.
- ~~16-~~ 17. "Member" means a person who has qualified for and been admitted to membership in an eligible organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement, and who pays regular monthly, annual, or other periodic dues or is a fully paid life member of the eligible organization. "Member" includes auxiliary members, but excludes social and honorary members.
- ~~17-~~ 18. "Other public-spirited organization" means a nonprofit organization which has been in existence within this state for two years and is recognized by the governing body of a city or county by resolution

as public-spirited and eligible to conduct games of chance under this chapter.

- ~~18-~~ 19. "Person" means any person, firm, corporation, association, or organization.
- ~~19-~~ 20. "Religious organization" means any nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances which has been so gathered or united in this state for two years.
- ~~20-~~ 21. "Veterans organization" means any congressionally chartered organization within this state, or any branch or lodge or chapter of a nonprofit national or state organization within this state, the membership of which consists of individuals who were members of the armed services or forces of the United States. Such organizations shall have been in existence in this state for two years.

SECTION 21. Two new sections to chapter 53-06.1 of the North Dakota Century Code are created and enacted as follows:

Gaming commission - Members - Appointment - Term - Qualifications - Compensation.

1. The state gaming commission consists of the chairman and four other members appointed by the governor, with the consent of the senate. The members serve three-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person who has a financial interest in gaming cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.
3. Commission members are entitled to forty dollars per day for compensation for each day spent on commission duties, and mileage and expense reimbursement as allowed to other state employees.

Duty of attorney general to participate in certain hearings - Employment of private counsel by commission. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of chapters 53-06.1 and 53-06.2. The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.

\* SECTION 22. AMENDMENT. Section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03. Licensure - Exceptions for raffles, sports pools, and bingo - City and county authorization - Fees - Suspension and revocation.

1. Except as otherwise provided in this section, eligible organizations desiring to conduct games of chance shall ~~annually~~ apply annually for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred fifty dollar license fee, except for those organizations whose average annual gross proceeds do not exceed twenty-five thousand dollars, for which the fee is one hundred dollars.
2.
  - a. Any nonprofit organization recognized as public-spirited by the governing body of a city or county may obtain local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed six thousand dollars annually, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool.
  - b. A nonprofit organization that conducts a city or county festival or celebration, ~~or a centennial committee organized by a city or county for the purpose of celebrating the North Dakota centennial,~~ may obtain local authorization to conduct raffles in which the primary prize does not exceed one thousand dollars and the aggregate does not exceed two thousand dollars. For purposes of this subdivision, a "city or county festival or celebration" means an event:
    - (1) In celebration of local heritage, anniversary of establishment of the political subdivision, or other significant local event recognized as public-spirited by the governing body of the city or county; and
    - (2) Supported by significant community participation.
  - c. To obtain local authorization, the organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees not to exceed twenty-five dollars for each authorization.
  - d. For purposes of this subsection, the determination of what is a "public-spirited" organization is within the sole discretion of the governing body of the city or county.
3. The attorney general shall license ~~such organizations which that~~ conform to the requirements of this chapter by issuing licenses as follows:

\* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1051, chapter 548, and by section 1 of House Bill No. 1597, chapter 549.

- a. A class A license to an eligible organization licensed as a retail alcoholic beverage dealer in North Dakota that maintains a building for the use of its members and guests, and that offers meals or liquor, or both, as part of its operation.
  - b. A class B license to any other eligible organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.
  - c. A class C license to an eligible organization that conducts games of chance on not more than two occasions per year, regardless of whether that organization is licensed as a retail alcoholic beverage dealer in this state.
  - d. The attorney general shall establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the eligible organization, and the adjusted gross proceeds collected or expected to be collected by the eligible organization.
4. Games of chance may be operated or conducted only on premises or sites set forth in the application as follows:
- a. Class A license applicants are limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion per licensing year upon written request.
  - b. License applicants shall first secure approval of the proposed site or sites on which it intends to conduct games of chance under this chapter from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general. The governing body may charge a one hundred dollar fee for this permit.
  - c. Rented premises are subject to rules adopted by the attorney general.
  - d. Only one eligible organization at a time may be authorized to conduct games of chance at a specific location, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:
    - (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.
    - (2) Upon request of the licensee, the license is suspended for that specific day by the attorney general.

- e. Licenses, rules of play, and state identification devices must be displayed on forms and in the manner specified in rules adopted by the attorney general.
5. The attorney general may, by motion, based on reasonable ground or upon written complaint, suspend or revoke, under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.
6. The attorney general or the commission may impose monetary fines on licensed organizations, distributors, and manufacturers for failure to comply with any provision of this chapter or any rule adopted under this chapter. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor or manufacturer is a minimum of one hundred dollars and may not exceed five thousand dollars. This fine may be in addition to or in lieu of license suspensions or revocations.

\* SECTION 23. AMENDMENT. Section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games of chance - Premises - Equipment - Compensation.

1. No person, except a member or employee of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting of any game of chance under this chapter.
2. Except when authorized by the attorney general, no games of chance may be conducted with any gaming equipment other than gaming equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.
3. The governing board of an eligible organization is primarily responsible for the proper determination and distribution of the entire net proceeds of any game of chance held in accordance with this chapter.
4. The premises where any game of chance is being held, operated, or conducted, or where it is intended that such the game will be held, must be open to inspection by the ~~licensing authority~~ attorney general, its the attorney general's agents and employees, by representatives of the governing body authorizing games of chance, and by peace officers of any political subdivision of this state.
5. When any merchandise prize is awarded in a game of chance, its value is its current retail price.
6. Equipment, prizes, and supplies for games of chance may not be purchased or sold at prices in excess of the usual price thereof.

\* NOTE: Section 53-06.1-06 was also amended by section 4 of House Bill No. 1597, chapter 549; by section 2 of Senate Bill No. 2219, chapter 545; by section 27 of Senate Bill No. 2068, chapter 54; and by section 1 of Senate Bill No. 2541, chapter 550.

7. The entire net proceeds derived from the holding of games of chance must be devoted within three months from the date such proceeds were earned to the uses permitted by this chapter. Any organization desiring to hold the net proceeds of games of chance for a period longer than three months from the date such proceeds were earned must apply to the licensing authority or governing body, as the case may be, for special permission, and upon good cause shown, the licensing authority or governing body may grant the request.
8. Except at the temporary alternate site provided by subdivision a of subsection ~~3~~ 4 of section 53-06.1-03, only the members of an organization licensed as a class A licensee by the attorney general under this chapter and their spouses and bona fide guests may participate in playing games of chance conducted by such licensed organization.
9. No person convicted of a felony within the last two years, or determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter.
10. Any person involved with the conduct of games of chance must be:
  - a. A person of good character, honesty, and integrity.
  - b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.
11. The attorney general may prohibit a person from playing games of chance if the person violates any provision of this chapter or any rule adopted under this chapter.

SECTION 24. AMENDMENT. Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Tax based on adjusted gross proceeds. A tax as provided in this section upon the total adjusted gross proceeds received by a licensed eligible organization must be paid to the ~~licensing authority~~ attorney general on a quarterly basis in the manner and upon the forms as prescribed by the ~~licensing authority~~ attorney general by rule. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for expenses. The amount of this tax must be paid from adjusted gross proceeds and may not be charged against the percentage limitation of expenses. The tax is hereby imposed upon every eligible organization, to be levied, collected, and paid quarterly with respect to the adjusted gross proceeds of the eligible organization as provided in this section, computed at the following rates:



1. On adjusted gross proceeds not in excess of two hundred thousand dollars per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of two hundred thousand dollars per quarter but not in excess of four hundred thousand dollars per quarter, a tax of ten percent.
3. On adjusted gross proceeds in excess of four hundred thousand dollars per quarter but not in excess of six hundred thousand dollars per quarter, a tax of fifteen percent.
4. On adjusted gross proceeds in excess of six hundred thousand dollars per quarter, a tax of twenty percent.

SECTION 25. AMENDMENT. Section 53-06.1-12.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.1. Allocation of games of chance tax - Appropriation. The state treasurer, at the direction of the licensing authority attorney general, shall pay one hundred seventy thousand dollars per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with enforcement of this chapter within the city or county. In addition, two hundred thousand dollars per biennium, must be deposited in the attorney general's operating fund and must be used only for the enforcement of gaming as appropriated. Any remaining taxes collected under this chapter must be deposited by the state treasurer in the general fund.

SECTION 26. AMENDMENT. Section 53-06.1-12.2 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.2. Charitable gaming tickets excise tax in lieu of sales and use taxes. In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of two percent on the gross receipts from the sale at retail of charitable gaming tickets to a final user. A sale at retail for purposes of this section includes charitable gaming tickets sold and charitable gaming tickets given in return for another charitable gaming ticket as authorized under this chapter. Gross receipts for purposes of this section includes the face value of all charitable gaming tickets sold or given in return for another charitable gaming ticket. The tax imposed by this section must be paid to the licensing authority attorney general at the time returns are made and taxes are paid by the eligible organization under section 53-06.1-12.

SECTION 27. AMENDMENT. Section 53-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-13. Examination of books and records. The licensing authority attorney general and ~~its~~ the attorney general's agents, and representatives of the governing body of a city or county with respect to eligible organizations authorized by that governing body, ~~shall have the power to may~~ examine or cause to be examined the books and records of any eligible organization licensed or authorized to conduct games of chance under this chapter to the extent that such books and records relate to any transaction connected with holding, operating, or conducting any game of chance.

\* SECTION 28. AMENDMENT. Section 53-06.1-14 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-14. Distributors and manufacturers - Licensure.

1. Every manufacturer of charitable gaming tickets, every manufacturer of paper bingo cards, and every distributor shall annually apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand five hundred dollars, and the license fee for a manufacturer of charitable gaming tickets or a manufacturer of paper bingo cards is two thousand dollars.
2. No distributor may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to other licensed distributors, licensed organizations, or organizations that have been issued a local permit. A manufacturer of charitable gaming tickets or paper bingo cards may not sell, market, or otherwise distribute charitable gaming tickets or paper bingo cards, other than to a licensed distributor. A distributor of charitable gaming tickets or paper bingo cards must purchase or otherwise receive charitable gaming tickets or paper bingo cards only from a licensed manufacturer or licensed distributor.
3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No game of charitable gaming tickets, punchboards, sports pool boards, or a series of raffle wheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. North Dakota licensed distributors shall purchase the North Dakota gaming stamps from the attorney general's office and the cost for each stamp may not exceed twenty-five cents.
4. No licensed or authorized eligible organization may be a distributor. No wholesaler of liquor or alcoholic beverages may be a distributor. No North Dakota licensed manufacturer may be a distributor.
5. The attorney general or commission may, by motion based on reasonable grounds or on written complaint, suspend or revoke a distributor's or manufacturer's license in accordance with chapter ~~20-32~~ for violation, by the licensee or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.

SECTION 29. AMENDMENT. Section 53-06.1-17 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Section 53-06.1-14 was also amended by section 1 of House Bill No. 1052, chapter 554; by section 4 of House Bill No. 1290, chapter 552; and by section 5 of Senate Bill No. 2219, chapter 545.

53-06.1-17. Rules. The ~~licensing authority commission~~ shall adopt rules in accordance with chapter 28-32, relating to, but not limited to, methods of play, conduct, and promotion of games of chance; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees and authorized organizations; methods of competition and doing business by distributors; marking or identification of raffle tickets, charitable gaming tickets, bingo equipment, ticket receptacles, punchboards, or any other implements of gambling used or distributed in this state to implement or effectuate the provisions and purpose of this chapter; quality standards for the manufacture of charitable gaming tickets; to ensure that the entire net proceeds of games of chance are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter; to protect and promote the public interest; to ensure fair and honest games of chance; to ensure that fees and taxes are paid; to impose monetary fines and establish appeal procedures; and to seek to prevent or detect unlawful gambling activity.

\* SECTION 30. AMENDMENT. Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is ~~sixty five~~ sixty-seven thousand ~~two eight~~ hundred four dollars.

\*\* SECTION 31. AMENDMENT. Section 54-08-03 of the North Dakota Century Code is amended and reenacted as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~up to fifty three~~ fifty-five thousand ~~five six~~ hundred thirty-six dollars.

\*\*\* SECTION 32. AMENDMENT. Section 54-09-05 of the North Dakota Century Code is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

\*\*\*\* SECTION 33. AMENDMENT. Section 54-10-10 of the North Dakota Century Code is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

\*\*\*\*\* SECTION 34. AMENDMENT. Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

\*\*\*\*\* SECTION 35. AMENDMENT. Section 54-12-11 of the North Dakota Century Code is amended and reenacted as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~fifty five~~ fifty-seven thousand ~~seven nine~~ hundred twenty-eight dollars.

\* NOTE: Section 54-07-04 was also amended by section 10 of Senate Bill No. 2594, chapter 53.

\*\* NOTE: Section 54-08-03 was also amended by section 11 of Senate Bill No. 2594, chapter 53.

\*\*\* NOTE: Section 54-09-05 was also amended by section 12 of Senate Bill No. 2594, chapter 53.

\*\*\*\* NOTE: Section 54-10-10 was also amended by section 13 of Senate Bill No. 2594, chapter 53.

\*\*\*\*\* NOTE: Section 54-11-13 was also amended by section 14 of Senate Bill No. 2594, chapter 53.

\*\*\*\*\* NOTE: Section 54-12-11 was also amended by section 15 of Senate Bill No. 2594, chapter 53.

\* SECTION 36. AMENDMENT. Section 57-01-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~forty nine~~ fifty-one thousand ~~three two~~ hundred seventy-two dollars.

SECTION 37. AMENDMENT. Section 57-39.2-26.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. Allocation of sales, use, and motor vehicle excise tax revenues to revenue sharing and personal property tax replacement. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections equal to sixty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. The state aid distribution fund must be allocated, subject to legislative appropriation, as follows:

1. Fifty percent of the revenues must be allocated in the ~~last~~ first month ~~of~~ subsequent to each quarterly period for state revenue sharing as provided in sections 54-27-20.2 and 54-27-20.3.
2. Fifty percent of the revenues must be allocated for personal property tax replacement as provided in section 57-58-01.

SECTION 38. AMENDMENT. Section 57-58-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-58-01. Distribution to counties and local subdivisions. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08. On or before February 1, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before the fifth working day following June 30, 1990 ~~1991~~, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount, for payment by the state treasurer to each chief county and city fiscal officer, determined to be due such county and city based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of former section 57-15-23, and the grain tax under the provisions of former chapter

\* NOTE: Section 57-01-04 was also amended by section 16 of Senate Bill No. 2594, chapter 53.

57-03, together with any adjustments to be made in the manner hereinafter provided. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received from the state in the same ratio as he would have distributed the revenue from the personal property tax, adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, must be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section must be made based upon ninety-five percent of such payment for 1971 together with a growth factor which must be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each seven dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which equals ninety-five percent of such payment in the base year. For each seven dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which equals ninety-five percent of such payment in the base year.

On or before the fifth working day following June 30, ~~1990~~ 1991, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property taxes levied in the year 1968 for the North Dakota state medical center. The amount so certified must be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified.

Any political subdivision which levied taxes on taxable property in the year 1970 for a specific fund or purpose for which a levy was not made by it in the year 1968 shall be entitled to a distribution of revenue from the state in the year 1971 for any such levy. The amount of such distribution must be determined as follows: the county auditor shall certify to the state tax commissioner as soon as possible after March 30, 1971, the amount of each such levy made by and spread for each political subdivision on taxable real property in the county in the year 1970; the tax commissioner shall forthwith determine the correctness of such amounts and certify to the state treasurer for immediate payment to the county and cities an amount that is determined by dividing the total of such levies made and spread in 1970 on taxable real property in the county by the growth factor that is provided in the first paragraph of this section; the county treasurer within fifteen days after the receipt of such revenue from the state treasurer shall allocate and remit to each political subdivision its proportionate amount of that revenue.

If the classification of any property for taxation purposes is changed from real to personal property or from personal to real property because of legislative or judicial action, the county auditor of the county in which the property is located shall forthwith certify to the tax commissioner the amount of real estate taxes or personal property taxes that was levied on all such property by each taxing district in the year 1968 and in any other year thereafter that the tax commissioner may request. The tax commissioner, in

determining the amount to be certified to the state treasurer for payment to the political subdivisions pursuant to this section, shall adjust the amounts of taxes certified by the county auditor as levied on real property and on personal property in 1968 and in any other year as may be necessary by adding to or subtracting from each such amount the taxes on the reclassified property so that the distribution by the state to the county will be determined as though such property had been taxed in 1968 and all later years in the classification into which it was reclassified.

Notwithstanding the other provisions of this section, personal property tax replacement is an amount as determined under section 57-39.2-26.1, subject to legislative appropriation. If moneys appropriated by the legislative assembly for personal property tax replacement are not in the amount that would be provided under this section for distribution, the tax commissioner and the state treasurer shall provide for pro rata distribution of available funds on the basis of the formula contained in this section.

**SECTION 39. AMENDMENT.** Section 54 of House Bill No. 2058, as approved by the fifty-second legislative assembly, is amended and reenacted as follows:

**SECTION 54. APPROPRIATION - TRANSFER.** The amount of ~~\$3,500,000~~ \$3,000,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the science and technology corporation for the purposes of North Dakota Century Code chapter 10-30.4 for the biennium beginning July 1, 1991, and ending June 30, 1993. Of this appropriation, \$500,000 must be used to investigate and research potential value-added opportunities for livestock and crops and examine alternatives that can produce a system of agriculture which can sustain the state's present agriculture population. No more than \$300,000 of the moneys appropriated in this section may be used for administrative costs. The science and technology corporation may not duplicate, and shall coordinate with, existing programs at the university of North Dakota and North Dakota state university.

**SECTION 40. INCOME AUTHORIZATION - STATE TREASURER.** The state treasurer is authorized, as included in the appropriation for the state treasurer in subdivision 6 of section 1 of this Act, to administer the sale of alcohol beverage decals for liquor and beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler.

**SECTION 41. AGRICULTURE COMMISSIONER - ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated income line item in subdivision 10 of section 1 of this Act includes \$50,000, or so much thereof as may be necessary, from the environment and rangeland protection fund, for the purpose of paying a portion of the costs related to a noxious weed program administrator position in the agriculture department for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 42. LEGISLATIVE INTENT - ATTORNEY GENERAL - LITIGATION FEES.** It is the intent of the legislative assembly that \$50,000 included in the litigation fees line item in subdivision 4 of section 1 of this Act be used for costs related to the litigation involving the United States corps of engineers over the management of Missouri River dams.

SECTION 43. APPROPRIATION. There is hereby appropriated out of any moneys in the petroleum tank release compensation fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much thereof as may be necessary, to the commissioner of insurance for the purpose of administering the fund for the period beginning with the effective date of this Act and ending June 30, 1991.

SECTION 44. ATTORNEY GENERAL - CONTINGENT APPROPRIATION. If House Bill No. 1515 or House Bill No. 1579 of the fifty-second legislative assembly becomes effective, there is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$275,000, or so much thereof as may be necessary, to the attorney general for the purpose of defraying the expenses relating to the state's defense in court of the provisions of this legislation for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 45. STATE AUDITOR - PERFORMANCE REVIEWS. The state auditor shall conduct performance reviews of divisions or programs of the department of human services utilizing at least one full-time equivalent position. The state auditor shall present the resulting reports to the legislative council's interim budget committee on human services and other committees as selected by the legislative council during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 46. EMERGENCY. Section 43 of this Act is declared to be an emergency measure.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 29

SENATE BILL NO. 2002  
(Committee on Appropriations)

## DEPARTMENT OF HUMAN SERVICES

AN ACT making an appropriation for defraying the expenses of the department of human services, making an appropriation from the lands and minerals trust fund to the common schools trust fund, and providing an appropriation from the revolving loan fund maintained in the Bank of North Dakota; to provide authority for lease of real and personal property at the state developmental center and the state hospital; to provide alternative contingent appropriations; to allow the sale of surplus steam heat at the state developmental center; regarding administration of the child care block grant and at-risk child care programs; to create and enact a new section to chapter 50-06, three new subsections to section 50-24.4-01, and two new subsections to section 50-24.4-10 of the North Dakota Century Code, relating to insurance payments by the department of human services for persons with acquired immune deficiency syndrome, and operating margins and efficiency incentives for nursing homes; to amend and reenact section 50-24.1-02.2 of the North Dakota Century Code, relating to community spouse resource allowance; to provide legislative intent statements; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

## Subdivision 1.

## EXECUTIVE DIRECTOR

Salaries and wages	\$ 238,299
Operating expenses	43,796
Equipment	3,750
Total all funds	\$ 285,845
Less estimated income	37,839
Total general fund appropriation	\$ 248,006

## Subdivision 2.

## DEPARTMENTWIDE AND MANAGERIAL SUPPORT

Salaries and wages	\$ 5,789,704
Information services	1,329,667
Operating expenses	5,572,803
Equipment	57,536
Grants, benefits, and claims	644,199



Developmentally disabled facility loan fund	1,840,956
Total all funds	<u>\$ 15,234,865</u>
Less estimated income	<u>9,923,917</u>
Total general fund appropriation	<u>\$ 5,310,948</u>

## Subdivision 3.

## ECONOMIC ASSISTANCE

Salaries and wages	\$ 3,476,783
Information services	7,200,320
Operating expenses	8,937,808
Equipment	27,059
Grants, benefits, and claims	<u>128,266,774</u>
Total all funds	<u>\$147,908,744</u>
Less estimated income	<u>129,327,278</u>
Total general fund appropriation	<u>\$ 18,581,466</u>

## Subdivision 4.

## MEDICAL ASSISTANCE

Salaries and wages	\$ 2,144,890
Information services	1,877,335
Operating expenses	1,053,527
Equipment	13,800
Grants, benefits, and claims	<u>445,429,855</u>
Total all funds	<u>\$450,519,407</u>
Less estimated income	<u>334,103,757</u>
Total general fund appropriation	<u>\$116,415,650</u>

## Subdivision 5.

## VOCATIONAL REHABILITATION

Salaries and wages	\$ 2,603,789
Information services	329,188
Operating expenses	882,284
Equipment	243,350
Grants, benefits, and claims	<u>10,066,465</u>
Total all funds	<u>\$ 14,125,076</u>
Less estimated income	<u>11,838,979</u>
Total general fund appropriation	<u>\$ 2,286,097</u>

## Subdivision 6.

## FIELD SERVICES AND PROGRAM DEVELOPMENT

Salaries and wages	\$ 5,468,634
Information services	644,689
Operating expenses	6,916,182
Equipment	94,304
Seriously mentally ill enhancement	2,836,409
Grants, benefits, and claims	<u>43,469,292</u>
Total all funds	<u>\$ 59,429,510</u>
Less estimated income	<u>33,391,969</u>
Total general fund appropriation	<u>\$ 26,037,541</u>

## Subdivision 7.

## HUMAN SERVICE CENTERS

Salaries and wages	\$ 41,057,213
Information services	245,634
Operating expenses	11,035,936
Equipment	259,590
Grants, benefits, and claims	<u>1,926,585</u>

Total all funds	\$ 54,524,958
Less estimated income	23,990,746
Total general fund appropriation	\$ 30,534,212

## Subdivision 8.

## STATE HOSPITAL

Salaries and wages	\$ 43,174,488
Information services	1,036,025
Operating expenses	7,821,200
Equipment	287,621
Capital improvements	800,500
Total all funds	\$ 53,119,834
Less estimated income	14,269,164
Total general fund appropriation	\$ 38,850,670

## Subdivision 9.

## STATE DEVELOPMENTAL CENTER

Salaries and wages	\$ 37,166,749
Information services	48,123
Operating expenses	8,120,622
Equipment	252,734
Capital improvements	50,000
Total all funds	\$ 45,638,228
Less estimated income	33,308,043
Total general fund appropriation	\$ 12,330,185
Grand total general fund appropriation S.B. 2002	\$251,256,164
Grand total special fund appropriation S.B. 2002	\$593,046,074
Grand total all funds S.B. 2002	\$844,302,238

SECTION 2. APPROPRIATION. The amount of \$1,840,956, or so much thereof as may be necessary, as appropriated in the developmentally disabled facility loan fund line item in subdivision 2 of section 1 of this Act may be spent by the department of human services from the lands and minerals trust fund for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled loan fund program nos. 2 and 3 for the biennium beginning July 1, 1991, and ending June 30, 1993. The amount of \$700,000, or so much thereof as may be necessary, as appropriated in the capital improvements line item in subdivision 8 may be spent by the department from the lands and minerals trust fund for asbestos removal and relocation of utilities at the state hospital for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. APPROPRIATION. There may be spent by the department of human services, on or before June 1, 1993, from the cash balance of, and any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of \$1,500,000, or so much thereof as may be necessary, which is appropriated in subdivision 2 of section 1 of this Act.

SECTION 4. CHILDREN'S SERVICES COORDINATING COMMITTEE FUNDING. Notwithstanding any other statutory provision, the department of human services is authorized, subject to the approval of the office of management and budget, to accept and spend \$2,854,382 from funds available through the children's services coordinating committee which is hereby appropriated for the biennium beginning July 1, 1991, and ending June 30, 1993. Prior to acceptance of these funds, the department shall develop a comprehensive plan detailing staff to be hired and services to be provided.

**SECTION 5. TRANSFER.** Upon approval of the budget section, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 9 of section 1 of this Act.

**SECTION 6. APPROPRIATION.** Notwithstanding section 57-39.2-26.1, the amount of \$6,250,000, or so much thereof as may be necessary, as appropriated in section 1 of this Act, may be spent by the department of human services from the state aid distribution fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 7. LEGISLATIVE INTENT - FEDERAL FINANCIAL PARTICIPATION.** In the event actual federal financial participation funds are less than estimated in section 1 of this Act during the biennium beginning July 1, 1991, and ending June 30, 1993, the department shall report to the budget section the amount of the prospective deficiency appropriation that will be introduced to the fifty-third legislative assembly.

**SECTION 8. MEDICAID FUNDS - TRANSFER.** Upon receipt of medicaid funds for expenditure at the state hospital, the human service centers, and the developmental center, the department of human services may transfer the funds to the state hospital, the human service centers, and the developmental center and then spend them pursuant to the appropriation of such funds in the state hospital, the human service centers, and the developmental center appropriations contained in subdivisions 7, 8, and 9 of section 1 of this Act.

**SECTION 9. DEPARTMENT OF HUMAN SERVICES MAY LEASE REAL AND PERSONAL PROPERTY.** The executive director of the department of human services is authorized to lease surplus farm and pasture land at the state hospital and the developmental center, and to lease space in a building at the developmental center for a child care center. The executive director is also authorized to enter into further leases of real or personal property at the developmental center or the state hospital upon a specific finding that the granting of each such leasehold interest will result in a net economic gain for the department, taking into account all identifiable costs. The executive director may prescribe the terms and conditions of any leases entered into pursuant to this section and may renew existing leases. Any lease entered into must be subject to renewal or cancelable each biennium. Any lease or lease renewal of unneeded building or building space may be made only after consultation with the administrator of the state fire and tornado fund.

**SECTION 10. LEGISLATIVE INTENT - UNANTICIPATED FEDERALLY MANDATED PROGRAMS.** The legislative assembly recognizes the need to comply with the mandatory provisions of the various federal programs and the uncertainties inherent in anticipating federal legislation and in estimating the funds needed to comply with the new program requirements, including many of the medicaid expansion provisions within the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508]. If the general fund appropriations contained in subdivision 4 of section 1 of this Act are determined by the department to be insufficient to comply with the federal mandates during the biennium beginning July 1, 1991, and ending June 30, 1993, the department shall report to the budget section the amount of the prospective deficiency appropriation that will be introduced to the fifty-third legislative assembly.

**SECTION 11. CONTINGENT APPROPRIATION.**

1. If House Bill No. 1511 becomes effective, and if the department of human services is able to negotiate a new lease with the red river human services foundation, relating to office space in the building located at 15 Broadway, Fargo, North Dakota, and currently used to house the southeast human service center, the amount of \$505,463, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, to the department of human services for the purpose of defraying the expenses of rental of office space in the building located at 15 Broadway, Fargo, North Dakota, used to house the southeast human service center, for the period beginning November 1, 1991, and ending June 30, 1993. This appropriation is sufficient to defray rental at an amount equal to \$7.37 per square foot per year, or 1.03 times \$7.16 per square foot per year. The highest rental amount provided for in any current lease by any other state agency tenant of office space in the building located at 15 Broadway, Fargo, North Dakota, is \$7.16 per square foot per year.
2. If House Bill No. 1511 becomes effective, but the department of human services is unable to negotiate a new lease with the red river human services foundation, relating to office space in the building located at 15 Broadway, Fargo, North Dakota, and currently used to house the southeast human service center, the amount of \$389,440, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise appropriated, to the department of human services for the purpose of defraying the expenses of rental of office space in the building located at 15 Broadway, Fargo, North Dakota, used to house the southeast human service center, for the period beginning November 1, 1991, and ending October 31, 1992. No additional appropriation is necessary for the purpose of defraying the cost of rental of that office space because, under the circumstances described in this subsection, that office space would be vacated by the southeast human service center on or before October 31, 1992.
3. The amount of \$11,035,936 identified in subdivision 7 of section 1 of this Act for human service centers' operating expenses includes \$132,278 appropriated for the purpose of defraying the expenses of rental of office space in the building located at 15 Broadway, Fargo, North Dakota, for the period beginning July 1, 1991, and ending October 31, 1991. If House Bill No. 1511 becomes effective, the appropriations made in section 1 of this Act, together with the appropriations made under this section, provide insufficient funds for rent of human service facilities within North Dakota. Insufficient funds have been appropriated in order to permit the department of human services to cancel, on its own terms, the real estate lease, entered into between red river human services foundation and the state of North Dakota, department of human services, designated as contract number 05-123, relating to rental of office space in the building located at 15 Broadway, Fargo, North Dakota, used to house the southeast human service center.
4. If House Bill No. 1511 fails to become effective, the amount of \$661,389, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the general fund of the state

treasury, not otherwise appropriated, to the department of human services for the purpose of defraying the expenses of rental of office space in the building located at 15 Broadway, Fargo, North Dakota, used to house the southeast human service center.

SECTION 12. SALE OF SURPLUS STEAM HEAT - TERMS - NOT TO BE CONSTRUED AS THE DISTRIBUTION OF HEAT. The department, with the approval of the governor, is authorized but not required to determine if surplus steam heat is or may be produced at the developmental center, and to sell any surplus steam heat to the city of Grafton. The sale may be on such terms and conditions as may be deemed necessary by the department, provided that no sale may be made for less than the cost of producing the surplus steam heat. A sale of steam heat, if made by the department to the city of Grafton, may not be construed as the distribution of heat under title 49.

SECTION 13. ADMINISTRATION OF CHILD CARE BLOCK GRANT AND AT-RISK CHILD CARE PROGRAMS. The department of human services shall function as the designated state agency for administration of the Child Care and Development Block Grant Program under section 658C of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, Section 5081, 42 U.S.C. 602, et seq.] and the At-Risk Child Care Program under Section 5081 of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, Section 5081; 42 U.S.C. 602(i); 42 U.S.C. 603(n)]. The department may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of federal law and regulations pertaining to the block grant and child care programs, including development of plan amendments and applications for federal funding and the issuance of policy manuals, forms, and program directives. Under the supervision and direction of the department, each county social service board shall administer the programs to the extent state and federal funds are available to defray the full costs of program administration and the provision of program benefits to eligible individuals and families. The department is authorized to employ such staff as is necessary for administration of the programs, within the limitations of appropriations therefor in section 1 of this Act.

SECTION 14. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Insurance payments by the department. Notwithstanding any other eligibility requirements for human services programs, the department, pursuant to rules promulgated by the department, may pay health insurance premiums, copayments, and deductibles for a person with acquired immune deficiency syndrome if the payment of premiums, copayments, and deductibles is determined to be a cost-effective alternative to the payment of future medical assistance and economic assistance costs for that person.

SECTION 15. AMENDMENT. Section 50-24.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.2. Community spouse resource allowance. In determining eligibility for medical assistance applicants and recipients, the department of human services shall establish a community spouse resource allowance of at least twenty-five thousand dollars for an ineligible community spouse equal to the maximum community spouse resource allowance as provided by 42 U.S.C. 1396r-5(f)(2).

SECTION 16. Three new subsections to section 50-24.4-01 of the North Dakota Century Code are created and enacted as follows:

"Direct care costs" means the cost category for allowable nursing and therapy costs.

"Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

"Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

SECTION 17. Two new subsections to section 50-24.4-10 of the North Dakota Century Code are created and enacted as follows:

Effective July 1, 1991, the efficiency incentives to be established by the department pursuant to subsection 4 for a facility with an actual rate below the limit rate for indirect care costs must include the lesser of two dollars and sixty cents per resident day or the amount determined by multiplying seventy percent times the difference between the actual rate, exclusive of inflation indices, and the limit rate, exclusive of current inflation indices. The efficiency incentive must be included as a part of the indirect care cost rate.

Effective July 1, 1991, each nursing home must receive an operating margin of a least three percent based upon the lesser of the actual direct care and other direct care costs and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care cost categories.

SECTION 18. LEGISLATIVE INTENT - DEPARTMENT OF HUMAN SERVICES BUDGET ALLOTMENTS. Notwithstanding the provisions of section 17 of this Act or any other provision of law, it is the intent of the legislative assembly that all general fund appropriations in section 1 of this Act be subject to the provisions of North Dakota Century Code sections 54-44.1-12 and 54-44.1-13.1 relating to budget allotments and reductions. It is the further intent of the legislative assembly that moneys appropriated for medical assistance payments required under section 17 of this Act shall not be reduced by a percentage greater than any percentage allotment of general fund moneys required of the department pursuant to the provisions of North Dakota Century Code sections 54-44.1-12 and 54-44-13.1.

SECTION 19. LEGISLATIVE INTENT - CASELOAD REPROJECTIONS. It is the intent of the legislative assembly that the department of human services prepare updated caseload reprojections for the 1993-95 biennium by January 15, 1993, and present these reprojections to the appropriations committees as requested by the committees.

SECTION 20. LEGISLATIVE INTENT - DEVELOPMENTAL DISABILITIES PROVIDER SALARY INCREASES. It is the intent of the legislative assembly that community developmental disabilities provider agencies provide employee salary increases of four percent the first year of the 1991-93 biennium. Funds for these increases are to be made available contingent upon individual developmental disabilities provider agencies maintaining title XIX certification and ACDD accreditation.

SECTION 21. LEGISLATIVE INTENT - EXPANDED CHILDREN'S MENTAL HEALTH PROGRAM. The amount of \$260,030 in estimated income, or so much thereof as may be necessary, as appropriated in subdivision 6 of section 1 of this Act, shall be expended for the expansion of children's mental health programs in accordance with the terms of the federal children and adolescent service system program grant received by the children's services coordinating committee and subgranted, in part, to the department for administration. The department is authorized to employ a full-time mental health professional and a secretary for the administration of the program, within the limitations of appropriations therefor in subdivision 6 of section 1 of this Act.

SECTION 22. LEGISLATIVE INTENT - CHILDREN'S PROGRAMS. It is the intent of the legislative assembly that \$200,000 in federal IV-E revenues, or so much thereof as may be necessary, as appropriated in subdivision 6 of section 1 of this Act be dedicated by the department to augment the operation of those children's service programs financed through the receipt and expenditure of funds appropriated to and received from the children's services coordinating committee during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 23. LEGISLATIVE INTENT - STATE HOSPITAL INCOME - MEDICAID GRANTS. It is the intent of the legislative assembly that in the event the department of human services projects a deficiency appropriation relating to state hospital income or Medicaid grant funding that it report any anticipated general fund deficiencies to the budget section and seek its approval before it continues to spend at a level which would require a request for a deficiency appropriation from the next legislative assembly.

SECTION 24. LEGISLATIVE COUNCIL STUDY - IMPACT OF CHILD SUPPORT GUIDELINE MODELS. The legislative council shall consider studying the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families affected by the guidelines, and on children who receive child support. The study, if conducted, should address the impact of the various models and whether the various models provide adequate financial support for the children involved. The legislative council, if a study is conducted, shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-third legislative assembly.

SECTION 25. EFFECTIVE DATE. Section 15 of this Act is effective on July 1, 1992.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 30

SENATE BILL NO. 2003  
(Committee on Appropriations)

### EDUCATIONAL AGENCIES AND INSTITUTIONS

AN ACT to provide an appropriation for defraying the expenses of the department of public instruction, the state board of vocational education, the school for the deaf, the school for the blind, and the state library; to provide for an appropriation of funds from the displaced homemaker fund and state school construction fund; to amend and reenact sections 15-21-02, 15-21-13.1, 15-44-09, and 15-65-05 of the North Dakota Century Code and section 10 of chapter 218 of the 1989 Session Laws of North Dakota, relating to the salary of the superintendent of public instruction, school district accounting and reporting systems, matching funds of school districts for telecommunication grants, and unspent funds of the 1989-91 school restructuring appropriation; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the superintendent of public instruction, the state board of vocational education, the school for the deaf, the school for the blind, and the state library for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.	DEPARTMENT OF PUBLIC INSTRUCTION	
Salaries and wages		\$ 8,476,073
Information services		595,714
Operating expenses		4,112,251
Equipment		427,418
Electronic media		360,000
Grants - foundation aid and transportation		381,014,334
Grants - tuition apportionment		47,225,456
Grants - special education		39,586,572
Grants - other grants		79,142,686
School restructuring		5,900,000
Total all funds		<u>\$566,840,504</u>
Less estimated income		140,859,930
Total general fund appropriation		<u>\$425,980,574</u>



Subdivision 2.

BOARD OF VOCATIONAL EDUCATION

Salaries and wages	\$ 2,388,161
Information services	47,216
Operating expenses	450,566
Equipment	86,223
Grants - vocational, other	19,470,083
Advisory council - vocational education	310,000
BSC vocational grant	1,747,206
UND-LR vocational grant	787,001
UND-W vocational grant	784,048
Adult farm management	250,000
Total all funds	<u>\$ 26,320,504</u>
Less estimated income	12,327,069
Total general fund appropriation	<u>\$ 13,993,435</u>

Subdivision 3.

STATE LIBRARY

Salaries and wages	\$ 1,439,982
Information services	73,109
Operating expenses	1,026,064
Equipment	14,500
Grants, benefits, and claims	1,050,000
Total all funds	<u>\$ 3,603,655</u>
Less estimated income	994,485
Total general fund appropriation	<u>\$ 2,609,170</u>

Subdivision 4.

SCHOOL FOR THE DEAF

Salaries and wages	\$ 3,408,370
Information services	5,420
Operating expenses	743,251
Equipment	103,699
Capital improvements	25,300
Total all funds	<u>\$ 4,286,040</u>
Less estimated income	389,775
Total general fund appropriation	<u>\$ 3,896,265</u>

Subdivision 5.

SCHOOL FOR THE BLIND

Salaries and wages	\$ 2,048,358
Operating expenses	458,971
Equipment	69,500
Capital improvements	70,000
Expanded outreach	268,120
Total all funds	<u>\$ 2,914,949</u>
Less estimated income	836,449
Total general fund appropriation	<u>\$ 2,078,500</u>
Grand total general fund appropriation S.B. 2003	\$448,957,944
Grand total special funds appropriation S.B. 2003	\$155,457,708
Grand total all funds S.B. 2003	<u>\$604,415,652</u>

SECTION 2. INTENT. It is the intent of the legislative assembly that the sum of \$47,225,456, or such greater or lesser sums as become available, included in the grants-tuition apportionment and estimated income line items in subdivision 1 of section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the

state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 3. DISPLACED HOMEMAKERS.** The amount of \$260,000, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act may be spent from the displaced homemaker fund for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 4. TELECOMMUNICATIONS.** The amount of \$3,000,000, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act may be spent, notwithstanding the provisions of chapter 15-60 of the North Dakota Century Code, from the state school construction fund for the biennium beginning July 1, 1991, and ending June 30, 1993. The total amount shall be used for telecommunication grants.

**SECTION 5. ADDITIONAL INCOME.** The department of public instruction may seek additional income for support of the teacher center network, departmental computerization, and to provide instructional courses by electronic media for the biennium beginning July 1, 1991, and ending June 30, 1993. Income received for these projects can be expended by authorization of the emergency commission.

**SECTION 6. APPROPRIATION.** The line item entitled grants, benefits, and claims in subdivision 3 of section 1 of this Act includes \$1,000,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1992.

\* **SECTION 7. AMENDMENT.** Section 15-21-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~fifty~~ fifty-two thousand three hundred ~~twelve~~ thirteen dollars. The superintendent is also entitled to reimbursement for expenses incurred in the discharge of official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

**SECTION 8. AMENDMENT.** Section 15-21-13.1 of the North Dakota Century Code is amended and reenacted as follows:

15-21-13.1. Uniform accounting and reporting system. The superintendent of public instruction shall implement a uniform computerized system for the accounting, budgeting, and reporting of fiscal data for all school districts in the state. The accounting system shall be based on Handbook II-B, Revised, as developed and piloted in the state's school districts during the past two years. All school districts shall, upon request, submit additional reports concerning finances to the superintendent. The superintendent of public instruction shall select one type of computer hardware, which must be compatible with personal computer systems, and no more than two software programs to be used by school districts.

**SECTION 9. AMENDMENT.** Section 15-44-09 of the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 15-21-02 was also amended by section 4 of Senate Bill No. 2594, chapter 53.

15-44-09. Funds controlled and paid out by school district clerk business manager of the school district - Accounting. All funds shall be kept in the possession or under the control of, and shall be paid out by, the business manager of the school district clerk except as otherwise provided by the laws of this state, and he. The business manager shall keep one general account of the entire receipts and expenditures of the district and separate itemized accounts for each class of receipts and expenditures, unless otherwise directed by the superintendent of public instruction. ~~His~~ The business manager's books shall or computer systems must show at all times, by entries under proper heads, all receipts of funds and payments made therefrom so as to enable any person readily to ascertain the balance in any fund.

SECTION 10. AMENDMENT. Section 10 of chapter 218 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 10. If House Bill No. 1637 is approved by the fifty-first legislative assembly, becomes effective, and contains a provision authorizing the superintendent of public instruction to distribute any unspent amount appropriated to the grants - foundation aid program, then a new section is hereby created and enacted to read as follows:

DISTRIBUTION OF UNSPENT FUNDS. If the amount appropriated pursuant to section 9 of this Act exceeds the amount necessary to make the payments as required in section 6 of this Act the unspent amount first \$200,000 of unspent funds may not be spent but any additional unspent amounts must be made available to the superintendent of public instruction to distribute pursuant to the superintendent's authority to distribute any unspent amount appropriated to the grants - foundation aid program under the provisions of House Bill No. 1637.

SECTION 11. EXEMPTION. The educational technology grants, authorized for the 1989-91 biennium, are not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for educational technology grants during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 12. AMENDMENT. Section 15-65-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-65-05. Telecommunications grants - Matching by school districts. The educational telecommunications council may require a school district to provide up to twenty five ~~fifty~~ percent in matching funds to receive any funds appropriated or that may otherwise become available for telecommunications.

SECTION 13. CHILDREN'S SERVICES COORDINATING COMMITTEE - DEPARTMENT OF HUMAN SERVICES FUNDING. Notwithstanding any other statutory provision, the department of public instruction is authorized, subject to the approval of the office of management and budget, to accept and expend funds available through the children's services coordinating committee and the department of human services. Prior to acceptance of these funds, the department shall develop a comprehensive plan detailing staff to be hired and services to be provided.

SECTION 14. APPROPRIATION - GEOGRAPHIC EDUCATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be

necessary, and the sum of \$50,000 from other funds, or so much thereof as may be necessary, derived from the national geographic society to the department of public instruction for the North Dakota geographic alliance for the biennium beginning July 1, 1991, and ending June 30, 1993. The amount from the general fund shall not be spent unless the matching amount from the national geographic society has become available.

**SECTION 15. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of providing matching grants on a dollar-for-dollar basis with up to \$2,000 per school district in order that school districts may purchase computers and equipment needed to implement a uniform computerized accounting system for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 16. LEGISLATIVE INTENT.** It is the intent of the 1991 legislative assembly that the line items entitled BSC vocational grant, UND-LR vocational grant, and UND-W vocational grant in subdivision 2 of section 1 of this Act are vocational program funds which shall be distributed on an equal monthly basis to the respective colleges during the 1991-93 biennium.

**SECTION 17. LEGISLATIVE INTENT - OTHER FUNDS - POSITIONS.** Persons in positions funded from other funds and federal funds may be employed only for as long as such funding is available.

**SECTION 18. LEGISLATIVE INTENT - NATIVE AMERICAN CURRICULUM.** It is the intent of the legislative assembly that up to \$50,000 of operating expenses included in subdivision 1 of section 1 of this Act may be used for developing, testing, and implementing a native American curriculum for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 19. CONTINGENT APPROPRIATION - VOCATIONAL EDUCATION GRANTS.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, an amount equal to the amount of unspent moneys appropriated in 1989 House Bill No. 1507 for school district restructuring, but not to exceed \$200,000, to the board of vocational education for secondary vocational education grants for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 20. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the state library will support the planning committee established to implement 1991 Senate Bill No. 2448 relating to library authorities. The department of public instruction and the state library will facilitate participation of all types of libraries, including school libraries, in this process in order to facilitate delivery of efficient and equitable information services to all North Dakotans. The superintendent of public instruction through the state librarian will provide direction to state library staff on its role in this process.

**SECTION 21. EMERGENCY.** Section 10 of this Act is declared to be an emergency measure.

Approved April 17, 1991  
Filed April 18, 1991

**CHAPTER 31**

SENATE BILL NO. 2004  
(Committee on Appropriations)

**OFFICE OF MANAGEMENT AND  
BUDGET DIVISIONS**

AN ACT to make an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent relating to state employee compensation adjustments; providing an appropriation to the state board of higher education for various higher education institutions; to provide legislative intent regarding tuition increases; to authorize and provide an appropriation for the disposition of san haven properties; and to establish a committee to authorize public sector supported employment in state agencies and institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET CENTRAL OPERATIONS

Salaries and wages	\$ 4,829,177
Information services	2,280,705
Operating expenses	1,499,681
Equipment	75,603
Capital grounds planning	25,000
Grants, benefits, and claims	26,039,180
State contingencies	500,000
Boys and girls clubwork	53,000
Miscellaneous refunds	25,000
State memberships	221,900
Unemployment insurance	2,000,000
Total all funds	<u>\$37,549,246</u>
Less estimated income	29,965,376
Total general fund appropriation	<u>\$ 7,583,870</u>

Subdivision 2.

FACILITY MANAGEMENT

Salaries and wages	\$ 2,846,565
Information services	32,000
Operating expenses	2,695,000
Equipment	31,000

Capital improvements	2,025,000
Total all funds	\$ 7,629,565
Less estimated income	2,025,000
Total general fund appropriation	\$ 5,604,565

## Subdivision 3.

## INFORMATION SERVICES DIVISION

Salaries and wages	\$ 8,830,037
Operating expenses	21,597,600
Equipment	6,910,000
Total special funds appropriation	\$37,337,637

## Subdivision 4.

## CENTRAL DUPLICATING SERVICES

Salaries and wages	\$ 1,222,623
Information services	50,510
Operating expenses	2,058,752
Equipment	31,500
Total special funds appropriation	\$ 3,363,385
Grand total general fund appropriation S.B. 2004	\$16,935,198
Grand total special funds appropriation S.B. 2004	\$73,741,398
Grand total all funds appropriation S.B. 2004	\$90,676,596

SECTION 2. TRANSFER. Upon approval of the budget section, the director of the office of management and budget may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1991, and ending June 30, 1993, must be deposited in the appropriate operating funds in the state treasury and can be expended with the authorization of the emergency commission.

SECTION 4. EXEMPTION. The information services appropriation contained in section 1 of chapter 3 of the 1989 Session Laws is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for continued development and operation of the accounting, management, and payroll systems during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. FACILITY MANAGEMENT. The amount of \$2,025,000, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act, is to be spent by the facility management division from the capitol building fund during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-second legislative assembly that 1991-93 compensation adjustments for state employees in the classified service are to be average increases of 4.0 percent beginning with the month of July 1991 to be paid in August 1991. All classified employees not on a probation status are entitled to receive increases of at least fifty dollars per month. Pay grade maximums shall not limit the amount of such an increase.

SECTION 7. APPROPRIATION. The director of the office of management and budget shall appoint a three-member committee on public sector supported employment consisting of a representative from the office of vocational rehabilitation, department of human services; a representative of the executive budget office, office of management and budget; and a representative of the central personnel division, office of management and budget.

The committee shall have authority to consider applications from state agencies and institutions for permission to have and fill a supported employment position or positions within that agency or institution. The committee may approve or disapprove such applications based upon objective criteria established by the committee, or may return them with suggestions for modification. If the committee approves an original or modified application it shall also authorize the addition to the payroll of the appropriate number of full- or part-time positions. The emergency commission is authorized to transfer, where necessary, funds from the appropriation made by this section to the salary line item of the applicant agency or institution. State agencies and institutions upon emergency commission approval may spend special funds not to exceed an aggregate of \$500,000, which funds are hereby appropriated for the supported employment program during the biennium beginning July 1, 1991, and ending June 30, 1993.

Agency or institution applications pursuant to this section must be presented to the committee prior to April 1, 1992; and must assure that the agency or institution will evaluate the position regularly, and, if the position is of value to the agency or institution, assure that it will include the position and appropriate salary funding in its budget submission for the 1993-95 biennium.

SECTION 8. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much thereof as may be necessary, to the board of higher education for the purpose of remodeling, renovation, and maintenance of buildings at the institutions under its control, including the following projects, for the biennium beginning July 1, 1991, and ending June 30, 1993:

- University of North Dakota - Williston
- Physical plant operating expenses
- University of North Dakota
- Physical plant operating expenses
- North Dakota college of science
- Capital improvements
- NDSU-Bottineau - Interactive video
- network site

SECTION 9. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the following institutions of higher learning under the supervision of the board of higher education for the purpose of defraying expenses which would otherwise be paid from tuition increases, for the biennium beginning July 1, 1991, and ending June 30, 1993:

University of North Dakota	\$1,165,215
North Dakota state university	902,037

Minot state university	331,991
Dickinson state university	118,154
Valley City state university	90,975
Mayville state university	64,613
University of North Dakota - medical center	73,778
Total general fund appropriation	<u>\$2,746,763</u>

SECTION 10. LEGISLATIVE INTENT - TUITION INCREASES. It is the intent of the legislative assembly that the amounts appropriated in section 9 of this Act are made available to reduce tuition rate increases proposed for the 1991-93 biennium in the executive budget and contained in House Bill No. 1003, as determined by the board of higher education. It is also the intent of the legislative assembly that the appropriations in section 9 of this Act will be the amounts by which the estimated income from tuition increases included in House Bill No. 1003 will not be collected.

SECTION 11. SAN HAVEN PROPERTIES - SALE, LEASE, EXCHANGE, OR TRANSFER. The director of the office of management and budget, with the approval of the governor, may sell, lease, exchange, or transfer title or use of any part or all of the san haven facilities and properties located in sections nineteen, twenty-nine, and thirty, township one hundred sixty-two north, range seventy-two west, located in Rolette County, North Dakota, under the following conditions:

1. By agreement with the governing body of the city of Dunseith, the director of the office of management and budget may designate up to eighty acres of the property authorized for sale by this section and, if the designated property is sold at auction, the city of Dunseith has the first right to purchase by matching the best bid received.
2. The portion of the property described in this section which is used as a golf course may be transferred for a nominal consideration to the city of Dunseith or a corporation or association of residents of the Dunseith community for use as a golf course. The transfer authorized by this subsection is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5. A transfer under this subsection may be made with an easement for the appurtenant use of water from any other property described in this section.
3. The property described in this section which is not otherwise disposed of under this section may be sold at auction, subject to the provisions of section 54-01-05.2. Any sale under this section is exempt from the provisions of section 54-01-05.5, except that one appraisal must be obtained before the sale of any property. If no satisfactory bid is received on property offered for sale at auction, the director of the office of management and budget, with the approval of the governor, may cause any buildings on the property to be demolished.
4. Any sale, use, or demolition of the property described in this section is subject to approval of the lienholder, the economic development administration.

SECTION 12. APPROPRIATION. There is hereby appropriated out of any moneys in the state fire and tornado fund, not otherwise appropriated, the sum of \$550,000, or so much thereof as may be necessary, to the office of



management and budget, of which \$500,000 may be used for asbestos removal at the san haven facilities only if the facilities are sold, disposed of in any manner, or demolished during the period and \$50,000 may be used for removing fuel tanks, securing facilities, and preparing the facilities for sale or other disposition, for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 13. STATE AID DISTRIBUTION FUND - AMERICAN DISABILITIES ACT. The amount of \$50,000 included in the estimated income line item in subdivision 1 of section 1 of this Act, may be spent by the office of intergovernmental assistance from the state aid distribution fund for the American Disabilities Act during the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 32

SENATE BILL NO. 2005  
(Committee on Appropriations)

### STATE RADIO COMMUNICATIONS

AN ACT making an appropriation for defraying the expenses of the state radio communications department; and providing for transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, to the state radio communications department for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,841,162
Information services	1,494,006
Operating expenses	374,047
Equipment	<u>523,245</u>
Total all funds	\$4,232,460
Less estimated income	<u>1,813,861</u>
Total general fund appropriation	\$2,418,599

SECTION 2. TRANSFER. There is hereby authorized the transfer to the state radio communications operating account the sum of \$1,288,861, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act from the state highway fund for the use of state radio communications services. Such moneys shall be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. TRANSFER. There is hereby authorized the transfer to the state radio communications operating account the sum of \$250,000, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act from the game and fish fund for the use of state radio communications services. Such moneys shall be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the office of management and budget study and develop a cost allocation plan for state radio communications to use to bill agencies for the cost of services provided by state radio communications. The cost allocation plan must be available for consideration by the fifty-third legislative assembly.

Approved April 17, 1991  
Filed April 18, 1991

# CHAPTER 33

SENATE BILL NO. 2006  
(Committee on Appropriations)

## EMERGENCY MANAGEMENT DIVISION

AN ACT making an appropriation for defraying the expenses of the division of emergency management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,218,142
Information services	38,900
Operating expenses	382,939
Equipment	35,100
Grants	65,000
Total all funds	<u>\$1,740,081</u>
Less estimated income	<u>1,406,874</u>
Total general fund appropriation	<u>\$ 333,207</u>

SECTION 2. APPROPRIATION. Federal funds of \$1,500,000, or so much thereof as may be necessary, received by the division of emergency management from the federal emergency management agency in excess of those funds appropriated in section 1 of this Act are hereby appropriated for grants in the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The amount appropriated for salaries and wages and grants in section 1 of this Act includes \$125,100 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 34

SENATE BILL NO. 2007  
(Committee on Appropriations)

### ADJUTANT GENERAL

AN ACT to provide for an appropriation for defraying the expenses of the adjutant general; to provide for an appropriation of funds from the national guard tuition trust fund; to provide an appropriation for the North Dakota veterans' cemetery; and to provide legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the adjutant general's office for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

ADJUTANT GENERAL	
Salaries and wages	\$ 1,707,621
Information services	78,900
Operating expenses	1,952,200
Equipment	50,800
Capital improvements	510,000
Grants, benefits, and claims	517,248
Inauguration	1,500
Recruiting and retention	27,000
Army guard contract	4,607,372
Tuition fees	1,015,000
Air guard contract	4,163,337
Total all funds	<u>\$14,630,978</u>
Less estimated income	<u>9,288,986</u>
Total general fund appropriation	<u>\$ 5,341,992</u>

SECTION 2. APPROPRIATION. The amount of \$1,485,063, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is to be spent from the national guard tuition trust fund to the adjutant general for the tuition programs provided for in chapters 37-07.1 and 37-07.2 and for adjutant general operations for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. LEGISLATIVE INTENT - NATIONAL GUARD ARMORIES. It is the intent of the legislative assembly that the Bottineau and Hillsboro armories receive rent from the adjutant general for the 1991-93 biennium; however, the adjutant general may choose not to use the armories. The moneys are to come from the increase in rent expenses for other armories recommended in the executive budget.

SECTION 4. APPROPRIATION - REPORT TO BUDGET SECTION. There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of constructing and operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1991, and ending June 30, 1993. The adjutant general shall report to the budget section of the legislative council during the 1991-93 biennium on the funds received and spent for the veterans' cemetery.

Approved April 11, 1991

Filed April 12, 1991

## CHAPTER 35

SENATE BILL NO. 2008  
(Committee on Appropriations)

### BOARD OF ANIMAL HEALTH

AN ACT making an appropriation for defraying the expenses of the board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the board of animal health for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$459,664
Information services	7,069
Operating expenses	171,966
Equipment	4,850
Total general fund appropriation	<u>\$643,549</u>

Approved April 11, 1991  
Filed April 12, 1991

CHAPTER 36

SENATE BILL NO. 2009  
(Committee on Appropriations)

SOIL CONSERVATION AND CENTENNIAL TREES

AN ACT making an appropriation for defraying the expenses of the soil conservation committee and centennial trees program; and to provide a statement of intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the soil conservation committee and the centennial trees program of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.

SOIL CONSERVATION COMMITTEE

Salaries and wages	\$ 545,769
Information services	7,648
Operating expenses	51,700
Equipment	1,000
Grants, benefits, and claims	745,386
Total general fund appropriation	<u>\$1,351,503</u>

Subdivision 2.

CENTENNIAL TREES PROGRAM

Salaries and wages	\$ 169,602
Information services	1,020
Operating expenses	68,200
Total all funds	<u>\$ 238,822</u>
Less estimated income	176,547
Total general fund appropriation	<u>\$ 62,275</u>
Grand total general fund appropriation S.B. 2009	\$1,413,778
Grand total special funds appropriation S.B. 2009	\$ 376,547
Grand total all funds appropriation S.B. 2009	<u>\$1,790,325</u>

SECTION 2. INTENT. It is the intent of the fifty-second legislative assembly that no transfers be made between the subdivisions in section 1 of this Act. The director of each agency to which funds are appropriated in section 1 of this Act must operate within the limits of legislative appropriations included in each subdivision in section 1.

SECTION 3. SOIL CONSERVATION COMMITTEE - AUTHORITY TO TRANSFER FUNDS. The soil conservation committee may transfer \$195,971, or so much thereof as may be necessary, from the general fund for 5.5 FTE positions for the soil survey digitizing center included in the salaries and wages line item in

subdivision 1 of section 1 of this Act to the operating expenses line item to pay for contract personnel for the soil survey digitizing center or to the grants, benefits, and claims line item to provide additional grants in the soil conservation technician grants program.

**SECTION 4. CENTENNIAL TREES PROGRAM - CENTENNIAL TREES PROGRAM TRUST FUND.** The total special funds appropriation line item in subdivision 2 of section 1 of this Act includes \$116,547, or so much thereof as may be necessary, from the centennial trees program trust fund for operating costs of the centennial trees commission for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 5. CENTENNIAL TREES PROGRAM - APPROPRIATION.** The sum of \$200,000, or so much thereof as may be necessary, of special funds, derived from sales income, gifts, grants, and donations, is hereby appropriated to the centennial trees commission for defraying the expenses of the commission for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 37

SENATE BILL NO. 2010  
(Committee on Appropriations)

### INSURANCE PREMIUM TAX DISTRIBUTIONS

AN ACT making an appropriation for insurance premium tax payments distribution to fire departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$5,200,000, and from the state fire and tornado fund, the sum of \$520,000, or so much thereof as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments, for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 16, 1991  
Filed April 18, 1991

**CHAPTER 38**

SENATE BILL NO. 2011  
(Committee on Appropriations)

**HOMESTEAD TAX CREDIT**

AN ACT making an appropriation to the state tax commissioner for payment of state reimbursement under the homestead tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Grants, benefits, and claims	<u>\$4,879,163</u>
Total general fund appropriation	<u>\$4,879,163</u>

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 39

SENATE BILL NO. 2012  
(Committee on Appropriations)

### STATE AID DISTRIBUTION FUND

AN ACT making an appropriation for the distribution of state aid distribution fund revenue to local political subdivisions of the state of North Dakota; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, to the state treasurer of the state of North Dakota for the purpose of distributing state aid distribution fund revenue to local political subdivisions, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Grants, benefits, and claims	<u>\$56,750,000</u>
Total state aid distribution fund appropriation	\$56,750,000

SECTION 2. INTENT. It is the intent of the legislative assembly that if the amount appropriated in this Act, plus \$6,250,000 appropriated to the department of human services, is less than the amount deposited in the state aid distribution fund during the 1991-93 biennium, the legislative assembly shall provide a deficiency appropriation to local political subdivisions of the excess amount deposited and that the deficiency appropriation be for the 1991-93 biennium, and not be considered in appropriations for the 1993-95 biennium.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 40

SENATE BILL NO. 2013  
(Committee on Appropriations)

### AGRICULTURAL COUNCILS AND COMMISSIONS

AN ACT making an appropriation for defraying the expenses of various agricultural councils and commissions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the agricultural councils and commissions listed in this section for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.	EDIBLE BEAN COUNCIL	
Operating expenses		\$ 600,000
Total appropriation from edible bean fund		<u>\$ 600,000</u>
Subdivision 2.	OILSEED COUNCIL	
Salaries and wages		\$ 60,741
Information services		56,254
Operating expenses		1,878,626
Equipment		7,000
Total appropriation from oilseed fund		<u>\$2,002,621</u>
Subdivision 3.	HONEY PROMOTION FUND	
Operating expenses		\$ 56,000
Total appropriation from honey promotion fund		<u>\$ 56,000</u>
Subdivision 4.	STATE POTATO COUNCIL	
Operating expenses		\$1,200,000
Total appropriation from spud fund		<u>\$1,200,000</u>
Subdivision 5.	TURKEY FUND	
Operating expenses		\$ 55,000
Total appropriation from turkey promotion fund		<u>\$ 55,000</u>
Subdivision 6.	STATE WHEAT COMMISSION	
Salaries and wages		\$ 665,730
Information services		25,501
Operating expenses		<u>2,585,349</u>

Equipment	20,000
Total appropriation from wheat promotion fund	<u>\$3,296,580</u>
Grand total special funds appropriation S.B. 2013	\$7,210,201

SECTION 2. APPROPRIATION. In addition to the appropriations provided in section 1 of this Act, all funds as may be on deposit in the various special funds for which appropriations are made in section 1 are hereby appropriated and can be spent only upon authorization of the emergency commission for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 41

SENATE BILL NO. 2014  
(Committee on Appropriations)

### STATE SEED DEPARTMENT

AN ACT to make an appropriation for defraying the expenses of the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds or other income, to the state seed department for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$2,605,539
Information services	10,865
Operating expenses	782,556
Equipment	74,520
Capital improvements	2,000,000
Grants, benefits, and claims	94,000
Contingency	<u>100,000</u>
Total special funds appropriation	\$5,667,480

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 42

SENATE BILL NO. 2015  
(Committee on Appropriations)

### GAME AND FISH DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the state game and fish department; and to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to the establishment of a game and fish department statewide land acquisition plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state game and fish department for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$ 8,795,411
Information services	307,291
Operating expenses	4,596,646
Equipment	560,600
Capital improvements	2,053,926
Grants, benefits, and claims	2,033,094
Noxious weed control	145,000
Land habitat and deer depredation	1,500,000
Wildlife habitat	650,000
In lieu of taxes	450,000
Grants, gifts, and donations	100,000
Upland game bird stocking	70,000
Nongame wildlife	120,000
Lonetree reservoir	400,000
Total special funds appropriation	<u>\$21,781,968</u>

SECTION 2. HABITAT RESTORATION - APPROPRIATION. The amount of \$650,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act is from the habitat restoration stamp program fund for the state game and fish department to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1991, and ending June 30, 1993. These funds may be spent only for the purposes and utilizing guidelines as outlined in section 20.1-03-12.1.

SECTION 3. PRIVATE HABITAT AND DEER DEPREDATION - APPROPRIATION. The amount of \$1,500,000, or such lesser amount as may be available, for the line item entitled land habitat and deer depredation in section 1 of this Act, is from the private land habitat improvement fund for the state game and fish department to improve wildlife habitat on private land and alleviate

depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. NONGAME WILDLIFE - APPROPRIATION. The amount of \$120,000, or such lesser amount as may be available, included in the line item entitled nongame wildlife in section 1 of this Act, is from the nongame wildlife fund for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Land acquisitions - Statewide land acquisition plan. The commissioner shall establish a comprehensive statewide land acquisition plan that must be approved by the budget section of the legislative council. Every land acquisition made by the department exceeding ten acres [4.05 hectares] or ten thousand dollars must be approved by the budget section.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 43

SENATE BILL NO. 2016  
(Committee on Appropriations)

## PARKS, TOURISM, AND HISTORY

AN ACT making an appropriation for defraying the expenses of the department of parks and recreation, department of tourism, and the state historical board; providing a statement of legislative intent regarding historic site master plans; and providing a statement of legislative intent regarding interagency cooperation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of parks and recreation, department of tourism, and the state historical board for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

## Subdivision 1.

## DEPARTMENT OF PARKS AND RECREATION

Salaries and wages	\$ 3,401,516
Information services	36,000
Operating expenses	1,831,851
Equipment	160,682
Capital improvements	517,600
Grants, benefits, and claims	3,646,080
Parks and historic sites improvements	1,900,000
Total all funds	\$11,493,729
Less estimated income	5,429,905
Total general fund appropriation	\$ 6,063,824

## Subdivision 2.

## DEPARTMENT OF TOURISM

Salaries and wages	\$ 711,573
Information services	20,000
Operating expenses	3,443,129
Equipment	25,378
Grants, benefits, and claims	60,000
Total all funds	\$ 4,260,080
Less estimated income	180,000
Total general fund appropriation	\$ 4,080,080

## Subdivision 3.

## STATE HISTORICAL BOARD

Salaries and wages	\$ 3,235,546
Information services	71,600

Operating expenses	783,865
Equipment	124,759
Capital improvements	339,604
Grants, benefits, and claims	500,000
Total all funds	\$ 5,055,374
Less estimated income	1,710,418
Total general fund appropriation	\$ 3,344,956
Grand total general fund appropriation S.B. 2016	\$13,651,360
Grand total special funds appropriation S.B. 2016	\$ 7,420,323
Grand total all funds S.B. 2016	\$21,071,683

SECTION 2. SNOWMOBILE FUND. The amount of \$200,000, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the snowmobile fund.

SECTION 3. TRAIL TAX TRANSFER FUND. The amount of \$100,000, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the trail tax transfer fund.

SECTION 4. FILM PRODUCTION RECRUITMENT UNIT - APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$62,500, or so much thereof as may be necessary, to the department of tourism for the purpose of funding a director position for the film production recruitment unit within the department for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. LAND ACQUISITION - APPROPRIATION. There is hereby appropriated the sum of \$100,000, out of any moneys in the general fund in the state treasury, not otherwise appropriated, and \$100,000 from special funds derived from other income, or so much thereof as may be necessary, to the department of parks and recreation for the purpose of acquiring the seventh day adventist camp property adjacent to the lake metigoshe state park for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. DEPARTMENT OF PARKS AND RECREATION - PARKS AND HISTORIC SITES IMPROVEMENTS. The parks and historic sites improvements line item in subdivision 1 of section 1 of this Act includes \$600,000 from the general fund which the department of parks and recreation shall use for purposes determined by the state historical board and the interagency working group as provided in section 7 of this Act. The director of the parks and recreation department may make payments of \$600,000, or so much thereof as may be necessary, from this line item to the state historical board for defraying the costs of parks and historic sites improvements conducted by the state historical board.

SECTION 7. LEGISLATIVE INTENT - INTERAGENCY COOPERATION. It is the intent of the legislative assembly that North Dakota tourism benefit from comprehensive planning and cooperation between the department of parks and recreation, department of tourism, and the state historical board. It is the intent of the legislative assembly that the governor organize an interagency working group to ensure communication, joint planning, and maximum cooperation among these agencies. Further, it is the intent of the legislative assembly that the planning and development of parks and historic sites be conducted by the respective departments as determined by the interagency working group.

SECTION 8. LEGISLATIVE INTENT - HISTORICAL BOARD - PLANNING. It is the intent of the legislative assembly that the state historical board develop master plans for the Fort Totten state historic site, the Fort Buford state historic site, and the Fort Seward state historic site by spending \$25,000 for each site's master plan from funds appropriated in subdivision 3 of section 1 of this Act during the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 9. FORT SEWARD MASTER PLAN. The state historical board shall provide a grant of \$25,000 to the city of Jamestown for the development of the Fort Seward state historic site master plan.

Approved April 18, 1991  
Filed April 18, 1991

## CHAPTER 44

SENATE BILL NO. 2017  
(Committee on Appropriations)

### WATER COMMISSION

AN ACT making an appropriation for defraying the expenses of the various divisions of the state water commission; providing for an appropriation of funds from the resources trust fund; providing for an appropriation from the solid waste management fund; and to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to repayment of loan proceeds and reimbursement of federal funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$ 6,619,290
Information services	145,450
Operating expenses	5,409,947
Equipment	409,972
Capital improvements	28,040,000
Grants, benefits, and claims	11,013,960
Cooperative research	3,050,000
Total all funds	\$54,688,619
Less estimated income	48,903,496
Total general fund appropriation	\$ 5,785,123

SECTION 2. APPROPRIATION. The amount of \$14,960,662, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act may be spent from the resources trust fund by the state water commission for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the commission in accordance with section 61-02-64.1.

SECTION 4. GRANTS, BENEFITS, AND CLAIMS. Section 54-44.1-11 does not apply to appropriations made for grants, benefits, and claims in this Act. However, this exclusion is only in effect for the two-year period after June 30, 1993. Any unexpended funds after that period has elapsed must be transferred to the resources trust fund.

SECTION 5. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 1991-93 revenues are in excess of \$7,758,323, any excess is hereby appropriated, subject to emergency commission approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. SOLID WASTE MANAGEMENT FUND. The estimated income line item included in section 1 of this Act includes \$140,000 which the state water commission may spend from the solid waste management fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 7. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Repayment of loan proceeds and reimbursements deposited in resources trust fund. Notwithstanding section 61-02-64.1, any repayment made after January 1, 1991, of any loans disbursed from the contract fund or resources trust fund and any moneys paid to the state or the commission after January 1, 1991, to reimburse the commission for moneys used for municipal, rural, and industrial water supply projects must be deposited in the resources trust fund in the state treasury.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 45

SENATE BILL NO. 2018  
(Committee on Appropriations)

### AGRICULTURAL PRODUCTS UTILIZATION COMMISSION

AN ACT making an appropriation for defraying the expenses of the agricultural products utilization commission; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the agricultural fuel tax fund and the general fund, in the state treasury, not otherwise appropriated, and from other income, to the agricultural products utilization commission for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Information services	\$ 4,000
Operating expenses	53,950
Contract personnel	72,000
Ethanol incentive program audit	2,000
Basic and applied research grants	651,038
Utilization and marketing grants	217,012
Cooperative marketing grants	200,000
Farm diversification	300,000
Total all funds	<u>\$1,500,000</u>
Less estimated income	<u>1,000,000</u>
Total general fund appropriation	\$ 500,000

SECTION 2. APPROPRIATION. All income received in excess of the amounts appropriated in section 1 of this Act is hereby appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1991, and ending June 30, 1993. Any funds received require the approval of the emergency commission before they can be spent.

SECTION 3. LEGISLATIVE INTENT - APPROPRIATION PRIORITY. If available moneys in the agricultural fuel tax fund are insufficient to fully fund all appropriations made from the fund by the fifty-second legislative assembly for the 1991-93 biennium, it is the intent of the legislative assembly that the appropriation from the agricultural fuel tax fund provided by section 1 of this Act not be reduced to less than \$1,000,000 for any reason and that any appropriation authority reduction that would reduce the appropriation in section 1 of this Act below that amount must instead be proportionately reduced from any other appropriations from the agricultural fuel tax fund.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 46

SENATE BILL NO. 2019  
(Committee on Appropriations)

### WORKERS COMPENSATION BUREAU

AN ACT making an appropriation for defraying the expenses of the workers compensation bureau and its divisions; and to provide a contingent appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and the workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

WORKERS COMPENSATION BUREAU	
Salaries and wages	\$ 5,903,211
Information services	1,015,328
Operating expenses	2,719,498
Equipment	472,251
Grants, benefits, and claims	1,244,703
Contingency	118,000
Civil air patrol	<u>10,722</u>
Total all funds	\$11,483,713
Less estimated income	<u>11,065,782</u>
Total general fund appropriation	\$ 417,931

SECTION 2. APPROPRIATION. The amount appropriated in section 1 of this Act includes \$10,111,929 which is to be spent from the workers' compensation fund for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. CONTINGENT APPROPRIATION. If Senate Bill No. 2206 is approved by the fifty-second legislative assembly, becomes effective and contains provisions authorizing the workers compensation bureau to establish a workers' compensation arbitration panel and the workers compensation bureau to contract for third-party administrative services and the establishment of a managed care program, there is hereby appropriated out of the workers' compensation fund, not otherwise appropriated, the sum of \$447,854 for the purpose of establishing an arbitration panel, and the sum of \$2,605,000 for the purpose of contracting for third-party administrative services and the establishment of a managed care program to the workers compensation bureau beginning July 1, 1991, and ending June 30, 1993.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 47

SENATE BILL NO. 2020  
(Committee on Appropriations)

### RETIREMENT AND INVESTMENT AGENCIES

AN ACT making an appropriation for defraying the expenses of various state retirement and investment agencies; and requiring reports on the group insurance plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Subdivision 1.	<b>RETIREMENT AND INVESTMENT OFFICE</b>	
Salaries and wages		\$1,358,969
Information services		335,366
Operating expenses		571,078
Equipment		108,586
Contingency		100,000
Contracted services		500,000
Total special funds appropriation		<u>\$2,973,999</u>
Subdivision 2.	<b>PUBLIC EMPLOYEES RETIREMENT SYSTEM</b>	
Salaries and wages		\$1,157,314
Information services		377,250
Operating expenses		620,344
Equipment		48,340
Health insurance program		125,000
Contingency		50,000
Total special funds appropriation		<u>\$2,378,248</u>
Grand total special funds appropriation S.B. 2020		<u>\$5,352,247</u>

**SECTION 2. REPORT TO BUDGET SECTION OF LEGISLATIVE COUNCIL.** In addition to the report required under North Dakota Century Code section 54-52.1-04.3, the public employees retirement board shall report to the budget section of the legislative council during the 1991-92 interim. The report must describe the status of the group insurance plan's reserve fund, the required balance of the reserve fund, and what action or events are necessary or have occurred in reaching the required balance.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 48

SENATE BILL NO. 2021  
(Committee on Appropriations)

### STATE DEPARTMENTS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various state departments and institutions; providing an appropriation for case mix nursing home reimbursement; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much thereof as may be necessary. These sums shall increase the general fund and special funds appropriation authority enacted by the fifty-first legislative assembly as adjusted by the allotment process to the stated departments and institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the period beginning January 1, 1991, and ending June 30, 1991, as follows:

Subdivision 1.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 32,000
Total general fund appropriation	<u>\$ 32,000</u>

Subdivision 2.

INDUSTRIAL COMMISSION

Lease payments	\$ 340,000
Total general fund appropriation	<u>\$ 340,000</u>

Subdivision 3.

ECONOMIC DEVELOPMENT COMMISSION

Operating expenses	\$ 45,000
Total general fund appropriation	<u>\$ 45,000</u>

Subdivision 4.

HOMESTEAD TAX CREDIT

Grants, benefits, and claims	\$ 230,000
Total general fund appropriation	<u>\$ 230,000</u>

Subdivision 5.

BOARD OF ANIMAL HEALTH

Salaries and wages	\$ 10,000
Total general fund appropriation	<u>\$ 10,000</u>

Subdivision 6.

CIVIL AIR PATROL

Operating expenses	<u>\$ 4,700</u>
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Total general fund appropriation		\$ 4,700
Subdivision 7.		
DEPARTMENT OF CORRECTIONS AND REHABILITATION		
Operating expenses		\$ 180,000
Total general fund appropriation		\$ 180,000
Subdivision 8.		
OFFICE OF THE ATTORNEY GENERAL		
State employee defense		\$ 120,000
Total general fund appropriation		\$ 120,000
Subdivision 9.		
DEPARTMENT OF HUMAN SERVICES		
Grants		\$ 125,600
Total general fund appropriation		\$ 125,600
Subdivision 10.		
NORTH DAKOTA VETERANS' HOME		
Salaries and wages		\$ 34,000
Operating expenses		47,000
Capital improvements		89,901
Total all funds		\$ 170,901
Less estimated income		39,000
Total general fund appropriation		\$ 131,901
Subdivision 11.		
OFFICE OF THE LABOR COMMISSIONER		
Salaries and wages		\$ 35,000
Operating expenses		9,867
Total general fund appropriation		\$ 44,867
Subdivision 12.		
FIFTY-SECOND LEGISLATIVE ASSEMBLY		
Salaries and wages		\$ 575,000
Operating expenses		85,000
Total general fund appropriation		\$ 660,000
Subdivision 13.		
DIRECTOR OF INSTITUTIONS		
Institutional medical fees		\$ 110,000
Total general fund appropriation		\$ 110,000
Subdivision 14.		
SCHOOL FOR THE DEAF		
Capital improvements		\$ 89,000
Total general fund appropriation		\$ 89,000
Grand total general fund appropriation S.B. 2021		\$2,123,068
Grand total special funds appropriation S.B. 2021		\$ 39,000
Grand total all funds appropriation S.B. 2021		\$2,162,068

SECTION 2. APPROPRIATION - INCREASED RATES FOR NURSING HOMES. The appropriation included in subdivision 9 of section 1 of this Act shall be used by the department of human services to match available federal and county funds to provide a total of \$456,331 for the payment of increased rates to nursing homes for the period beginning April 1, 1991, and ending

June 30, 1991. These increased rates are intended to restore a portion of the funding for efficiency incentives and operating margins which were reduced as a result of the December 1989 tax referrals. The department shall submit amendments to the state plan for medical assistance necessary to increase the funding for efficiency incentives and operating margins. The appropriation included in subdivision 9 of section 1 of this Act is contingent on approval of necessary state plan amendments by the health care financing administration.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 49

SENATE BILL NO. 2022  
(Committee on Appropriations)

### PROTECTION AND ADVOCACY PROJECT

AN ACT making an appropriation for defraying the expenses of the protection and advocacy project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the protection and advocacy project for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$1,692,982
Information services	45,015
Operating expenses	477,418
Equipment	20,844
Total all funds	<u>\$2,236,259</u>
Less estimated income	863,310
Total general fund appropriation	<u>\$1,372,949</u>

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 50

SENATE BILL NO. 2032  
(Legislative Council)  
(Interim Budget Committee on Long-Term Care)

### **BASIC CARE FACILITIES**

AN ACT making an appropriation from the state aid distribution fund for county optional supplemental payment grants by the department of human services; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. Notwithstanding section 57-39.2-26.1, there is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much thereof as may be necessary, to the department of human services for allocation pursuant to section 50-01-09.2 to assist counties in meeting the cost of services provided in basic care facilities for the period beginning August 1, 1990, and ending June 30, 1991. County social service boards need not have established and paid rates for residents of basic care facilities which conform to the payable rate requirements of section 75-02-07-17 of the North Dakota Administrative Code in order to receive a part of this allocation.

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

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 51

SENATE BILL NO. 2086  
(Redlin, Meyer)

### NOXIOUS WEED CONTROL

AN ACT making an appropriation for defraying the expenses of noxious weed control on the Little Missouri River and state-owned Burlington project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$34,500, or so much thereof as may be necessary, to the board of university and school lands for the purpose of controlling noxious weeds on the bed and islands of the Little Missouri River and on the state-owned Burlington project in Ward County for the biennium beginning July 1, 1991, and ending June 30, 1993. The board of university and school lands shall distribute these funds to the weed boards in Billings, Bowman, Golden Valley, Slope, McKenzie, and Ward counties based upon demonstrated need. Not more than \$22,500 may be distributed for noxious weed control on the Little Missouri River and not more than \$12,000 may be distributed for noxious weed control on the state-owned Burlington project in Ward County.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 52

SENATE BILL NO. 2572  
(Heinrich, O'Connell, Graba, Kelsh, Peterson)  
(Approved by the Committee on Delayed Bills)

### FOUNDATION AID

AN ACT making an appropriation for foundation aid per-pupil payments by the superintendent of public instruction; providing legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$7,000,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of making foundation aid per-pupil payments for the period beginning January 1, 1991, and ending June 30, 1991.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the per-pupil payments resulting from the appropriation made in section 1 of this Act are to be computed and distributed in proportion to payments made on a per-pupil basis for the second year of the 1989-91 biennium.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 53

SENATE BILL NO. 2594  
 (Senators Satrom, Lips, Lindaas)  
 (Representatives Rydell, DeMers)  
 (Approved by the Committee on Delayed Bills)

### STATE EMPLOYEE ADDITIONAL COMPENSATION

AN ACT to provide an appropriation for additional compensation to North Dakota state employees; to amend and reenact sections 4-01-21, 15-21-02, 26.1-01-09, 27-02-02, 27-05-03, 34-05-01.2, 49-01-05, 54-07-04, 54-08-03, 54-09-05, 54-10-10, 54-11-13, 54-12-11, and 57-01-04 of the North Dakota Century Code, relating to the salaries of the commissioner of agriculture, superintendent of public instruction, commissioner of insurance, supreme court justices, district court judges, commissioner of labor, public service commissioners, governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and tax commissioner; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The sums hereinafter listed, or so much thereof as may be necessary, are hereby appropriated out of the general fund and from special funds or moneys derived from federal funds or income in the state treasury as indicated to the agencies and institutions of state government named for the purpose of providing additional compensation to employees for the various agencies and institutions for the period beginning July 1, 1992, and ending June 30, 1993:

AGENCY OR INSTITUTION	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor	\$ 8,435		\$ 8,435
Lieutenant governor	1,691		1,691
Secretary of state	14,089		14,089
Office of management and budget			
Facility management	33,571		33,571
Central operations	36,066		36,066
Information services division		\$ 72,680	72,680
State auditor	23,078	13,553	36,631
Central duplicating services		13,524	13,524
State treasurer	5,072		5,072
Attorney general	68,453	3,602	72,055
Tax department	87,896		87,896
Legislative council	22,772		22,772
Supreme court	32,589		32,589
Judicial qualifications commission	2,254		2,254
District court	54,322		54,322
Retirement and investment office		12,361	12,361
Public employees retirement board		12,962	12,962
Public instruction	34,155	41,744	75,899



Board of higher education	7,816		7,816
Land department		10,989	10,989
Bismarck state college	80,120		80,120
UND-Lake Region	26,550		26,550
UND-Williston	27,836		27,836
University of North Dakota	585,288		585,288
Medical center rehabilitation hospital		109,395	109,395
University of North Dakota medical center	122,387	81,931	204,318
State toxicologist	4,332		4,332
North Dakota state university	456,891		456,891
North Dakota state college of science	145,154		145,154
Dickinson state university	75,129		75,129
Mayville state university	45,136		45,136
Minot state university	159,204		159,204
Valley City state university	68,265		68,265
NDSU-Bottineau branch	25,440		25,440
North Dakota forest service	11,947		11,947
State library	13,810		13,810
School for the deaf	29,615		29,615
School for the blind	19,806		19,806
Vocational education	8,169	9,984	18,153
State department of health and consolidated laboratories	97,076	64,718	161,794
Veterans home	16,071	24,106	40,177
Indian affairs commission	1,127		1,127
Veterans affairs	2,818		2,818
Children's services coordinating committee	2,215		2,215
Department of human services			
Executive office	997	111	1,108
Managerial support	34,577	15,535	50,112
Economic assistance	19,345	6,448	25,793
Medical assistance	7,924	13,491	21,415
Vocational rehabilitation	12,050	11,578	23,628
Office of field services	38,147	1,180	39,327
Regional centers	337,161	21,521	358,682
State hospital	409,223	8,352	417,575
Developmental center	136,633	277,405	414,038
Protection and advocacy project	16,263		16,263
Insurance commissioner		19,142	19,142
Industrial commission		30,414	30,414
Labor commissioner	3,905		3,905
Public service commission	18,288	9,848	28,136
Aeronautics commission	358	2,460	2,818
Department of banking and financial institutions		12,962	12,962
Securities commissioner	3,945		3,945
Bank of North Dakota		103,044	103,044
Housing finance agency		21,134	21,134
Job service		257,493	257,493
Workers compensation bureau		60,019	60,019
Highway patrol		114,476	114,476
Radio communications	16,906		16,906
Emergency management	2,536	7,608	10,144

Department of corrections			
Central office	2,818		2,818
Juvenile services	13,226		13,226
Industrial school	32,017	13,722	45,739
State penitentiary	103,271		103,271
Penitentiary industries		12,962	12,962
Parole and probation	21,302	2,367	23,669
Adjutant general	19,123	49,665	68,788
Economic development and finance department	18,542		18,542
Department of agriculture	18,935	4,734	23,669
Milk stabilization board		3,156	3,156
Oilseed council		564	564
Seed department		20,007	20,007
Board of animal health	3,495		3,495
State wheat commission		4,175	4,175
Transportation institute	2,112	3,596	5,708
Extension service	111,639	13,798	125,437
Northern crops institute	2,771	1,132	3,903
Main research center	141,325	60,568	201,893
Dickinson research center	6,317		6,317
Central grassland research center	2,812		2,812
Hettinger research center	3,285	365	3,650
Langdon research center	2,866	506	3,372
North central research center	3,369		3,369
Williston research center	3,653		3,653
Carrington research center	5,828	2,048	7,876
Agronomy seed farm		1,685	1,685
Land reclamation research center		11,344	11,344
Historical society	27,839	1,465	29,304
Council on the arts	1,803	451	2,254
Soil conservation committee	6,156		6,156
Centennial trees commission	564		564
Game and fish department		66,500	66,500
Department of tourism	5,072		5,072
Department of parks and recreation	20,880	1,099	21,979
Water commission	45,630		45,630
Department of transportation			
Transportation operation		567,091	567,091
Fleet services		9,242	9,242
Motor vehicle		27,614	27,614
Total	\$4,141,553	\$2,345,626	\$6,487,179

SECTION 2. STATE EMPLOYEE SALARY INCREASES - EFFECTIVE DATE. The amounts appropriated in section 1 of this Act are only to be available to state agencies and institutions beginning on July 1, 1992, to be paid beginning on August 1, 1992, or later, for employee compensation increases of forty dollars per month for each permanent full-time employee.

\* SECTION 3. AMENDMENT. Section 4-01-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~forty nine~~ forty nine ~~fifty one~~ fifty one thousand ~~three~~ three ~~two~~ two hundred ~~seventy two~~ seventy two dollars through June 30, 1992, and fifty one thousand seven hundred fifty two dollars thereafter.

\* NOTE: Section 4-01-21 was also amended by section 14 of Senate Bill No. 2001, chapter 28.

\* SECTION 4. AMENDMENT. Section 15-21-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is fifty fifty-two thousand three hundred twelve dollars through June 30, 1992, and fifty-two thousand seven hundred ninety-two dollars thereafter. The superintendent is also entitled to reimbursement for expenses incurred in the discharge of official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

\*\* SECTION 5. AMENDMENT. Section 26.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is forty nine fifty-one thousand three two hundred seventy-two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

\*\*\* SECTION 6. AMENDMENT. Section 27-02-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court shall be entitled to receive an annual salary commencing July 1, 1989, of sixty three seventy-one thousand eight hundred seventy one seventy-five dollars except that the through June 30, 1992, and seventy-one thousand five hundred fifty-five dollars thereafter. The chief justice of the supreme court shall be entitled to receive an additional one two thousand seven hundred seventy seven dollars per annum and commencing on July 1, 1990, each judge of the supreme court shall receive an annual salary of sixty eight thousand three hundred forty two dollars except that the chief justice of the supreme court shall receive an additional one thousand nine hundred one dollars per annum through June 30, 1992, and two thousand forty dollars per annum thereafter.

\*\*\*\* SECTION 7. AMENDMENT. Section 27-05-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state shall be entitled to receive an annual salary commencing July 1, 1989, of fifty nine sixty-five thousand four hundred five ninety dollars and commencing July 1, 1990, an annual salary of sixty two thousand nine hundred sixty nine dollars and his through June 30, 1992, and sixty-five thousand nine hundred seventy dollars thereafter. Each district judge is entitled to actual travel expenses, which shall include including mileage and subsistence while engaged in the discharge of his official duties outside the county in which his the judge's chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall be entitled to receive an additional one thousand four five hundred eight fifty dollars per annum commencing July 1, 1989, and one thousand four hundred ninety three dollars per annum commencing July 1, 1990, through June 30, 1992, and one thousand five hundred eighty-one dollars thereafter.

\* NOTE: Section 15-21-02 was also amended by section 7 of Senate Bill No. 2003, chapter 30.

\*\* NOTE: Section 26.1-01-09 was also amended by section 15 of Senate Bill No. 2001, chapter 28.

\*\*\* NOTE: Section 27-02-02 was also amended by section 4 of House Bill No. 1002, chapter 2.

\*\*\*\* NOTE: Section 27-05-03 was also amended by section 5 of House Bill No. 1002, chapter 2.

\* SECTION 8. AMENDMENT. Section 34-05-01.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-01.2. Department of labor to be administered by commissioner of labor. The department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. Following his election, the term of the commissioner of labor commences on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is forty-nine thousand ~~three~~ nine hundred dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

\*\* SECTION 9. AMENDMENT. Section 49-01-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is forty-nine ~~thirty~~ fifty-one thousand ~~three~~ two hundred ~~seventy~~ two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter. All fees received or charged by any such commissioner for any act or service rendered in any official capacity, shall be accounted for and paid over by him monthly to the state treasurer and shall be credited to the general fund of the state.

\*\*\* SECTION 10. AMENDMENT. Section 54-07-04 of the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is sixty-five ~~sixty~~ sixty-seven thousand ~~two~~ eight hundred four dollars through June 30, 1992, and sixty-eight thousand two hundred eighty-four dollars thereafter.

\*\*\*\* SECTION 11. AMENDMENT. Section 54-08-03 of the North Dakota Century Code is amended and reenacted as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is up to ~~fifty-three~~ fifty-five thousand ~~five~~ six hundred ~~thirty~~ six dollars through June 30, 1992, and fifty-six thousand one hundred sixteen dollars thereafter.

\*\*\*\*\* SECTION 12. AMENDMENT. Section 54-09-05 of the North Dakota Century Code is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is forty-nine ~~thirty~~ fifty-one thousand ~~three~~ two hundred ~~seventy~~ two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

\*\*\*\*\* SECTION 13. AMENDMENT. Section 54-10-10 of the North Dakota Century Code is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is forty-nine ~~thirty~~ fifty-one thousand ~~three~~ two hundred ~~seventy~~ two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

\* NOTE: Section 34-05-01.2 was also amended by section 17 of Senate Bill No. 2001, chapter 28.

\*\* NOTE: Section 49-01-05 was also amended by section 19 of Senate Bill No. 2001, chapter 28.

\*\*\* NOTE: Section 54-07-04 was also amended by section 30 of Senate Bill No. 2001, chapter 28.

\*\*\*\* NOTE: Section 54-08-03 was also amended by section 31 of Senate Bill No. 2001, chapter 28.

\*\*\*\*\* NOTE: Section 54-09-05 was also amended by section 32 of Senate Bill No. 2001, chapter 28.

\*\*\*\*\* NOTE: Section 54-10-10 was also amended by section 33 of Senate Bill No. 2001, chapter 28.

\* SECTION 14. AMENDMENT. Section 54-11-13 of the North Dakota Century Code is amended and reenacted as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~forty nine~~ forty-nine thousand ~~three~~ two hundred ~~seventy-two~~ seventy-two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

\*\* SECTION 15. AMENDMENT. Section 54-12-11 of the North Dakota Century Code is amended and reenacted as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~fifty five~~ fifty-five thousand ~~seven~~ seven hundred ~~twenty-eight~~ twenty-eight dollars through June 30, 1992, and fifty-eight thousand four hundred eight dollars thereafter.

\*\*\* SECTION 16. AMENDMENT. Section 57-01-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~forty nine~~ forty-nine thousand ~~three~~ two hundred ~~seventy-two~~ seventy-two dollars through June 30, 1992, and fifty-one thousand seven hundred fifty-two dollars thereafter.

Approved April 16, 1991  
Filed April 18, 1991

- \* NOTE: Section 54-11-13 was also amended by section 34 of Senate Bill No. 2001, chapter 28.
- \*\* NOTE: Section 54-12-11 was also amended by section 35 of Senate Bill No. 2001, chapter 28.
- \*\*\* NOTE: Section 57-01-04 was also amended by section 36 of Senate Bill No. 2001, chapter 28.

# GENERAL PROVISIONS

## CHAPTER 54

SENATE BILL NO. 2068  
(Legislative Council)  
(Interim Judiciary Committee)

### TECHNICAL CORRECTIONS ACT

AN ACT to create and enact a new subsection to section 24-01-01.1 of the North Dakota Century Code, relating to a missing reference; and to amend and reenact subsection 5 of section 4-14.1-02, sections 6-09.9-07, 10-04-08, 12.1-20-16, 15-03-04.3, 23-09.3-01, subsection 1 of section 23-18.2-02, sections 23-21.1-03, 25-04-08.1, subsection 2 of section 26.1-03-17, section 26.1-15.1-02, subsection 2 of section 26.1-38.1-11, subsection 1 of section 26.1-40-02, sections 26.1-42-01, 27-05.1-06, subsection 1 of section 27-09.1-05, subsection 48 of section 30.1-01-06, section 43-31-07, subsection 2 of section 47-18-05.1, subsection 2 of section 47-30.1-20, subsection 1 of section 47-30.1-37, subsection 6 of section 50-11.1-04, sections 50-26-01, 50-26-03, 51-13-03, subsection 8 of section 53-06.1-06, subsection 1 of section 54-07-01.2, subsection 1 of section 57-62-02, subsection 6 of section 65-01-02, subsection 3 of section 65-05-29, and section 65-05.1-03 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 5 of section 4-14.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in ~~subdivisions~~ subsections 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.

SECTION 2. AMENDMENT. Section 6-09.9-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09.9-07. Rules. The industrial commission may adopt such rules and guidelines as are necessary to implement sections 6-09.9-01 though ~~6-09.9-06~~ 6-09.9-05.

SECTION 3. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state ~~shall~~ must be registered as provided in this section. Application for registration of securities by qualification ~~shall~~ must be made by the

\* NOTE: Section 4-14.1-02 was also amended by section 2 of Senate Bill No. 2058, chapter 95.

issuer or the securities or by a registered dealer by filing in the office of the commissioner:

1. An application for registration which ~~shall~~ must be made in writing or on forms prescribed by the commissioner and which ~~shall~~ must contain the following information and be accompanied by the following documents:
  - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
  - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which he has indicated his intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.
  - c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
  - d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than his occupation.
  - e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment.
  - f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering.
  - g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any

variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person or corporation shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past



two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.

- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
  - m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
  - n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
  - o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.
  - p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
  - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. a. Payment of a registration fee for each security or class of security to be registered as follows:
    - (1) One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
    - (2) One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

- (3) In no event ~~shall~~ may such registration fee be less than one hundred dollars for each security or class of security to be registered. If the application for registration is denied, such registration fee less the actual cost to the state of processing and investigating as determined by the commissioner ~~shall~~ must be returned to the applicant.
  - (4) Provided, further, that any applicant may register additional securities under this subdivision before the expiration of one year from the date of the registration certificate at the same reduced fee, which ~~shall~~ must be computed as provided in paragraphs 1 and 2 as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
  - (5) For the renewal of the registration of securities for additional periods of one year there ~~shall~~ must be paid a renewal fee of one hundred dollars.
- b.
- (1) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] may register an indefinite number or amount of securities by including on the facing sheet of its registration statement a declaration that an indefinite number or amount of securities is being registered by such registration statement.
  - (2) At the time a declaration is filed there ~~shall~~ must be paid a registration fee of five hundred dollars.
  - (3) Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes.
  - (4) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] having an effective registration statement relating to an indefinite number or amount of securities shall, within sixty days after the end of any fiscal year and after the registration is terminated, file a report of the aggregate public offering price of securities sold in this state during the fiscal year and shall pay a filing fee of one-twentieth of one percent of such amount, but in no case ~~shall~~ may such filing fee be less than one hundred dollars nor more than two hundred fifty dollars. Failure to file the report and fee ~~shall be~~ is cause for the issuance of a stop order.
3. If the applicant is not domiciled in this state and is not a corporation organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.

4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus ~~shall~~ must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed ~~shall~~ must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it ~~shall~~ must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section ~~shall~~ must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event ~~shall~~ may the registration fee be returned.

Registration under this section ~~shall be~~ is effective for a period of one year, except that the effectiveness of a registration for an indefinite number or amount of securities under paragraph 1 of subdivision b of subsection 2 shall continue until terminated by either the commissioner or the issuer by filing within one hundred twenty days of the end of its fiscal year, an updated prospectus, a balance sheet, and a statement of income of the issuer.

SECTION 4. AMENDMENT. Section 12.1-20-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses. A minor who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the court, have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the child. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem ~~shall~~ must receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the expenses of the guardian ad litem in commitment

proceedings held in county court pursuant to subsection 7 8 of section 27-07.1-17.

**SECTION 5. AMENDMENT.** Section 15-03-04.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**15-03-04.3. Loan pool account - Management by Bank of North Dakota.** Subject to ~~the provisions of~~ this chapter the Bank of North Dakota ~~shall~~, in accordance with standard banking practices, shall manage all loans in the loan pool account and execute all instruments on behalf of the board of university and school lands that pertain to real estate mortgages in the loan pool account, including reamortization agreements, satisfactions, and partial releases. The Bank of North Dakota shall also act as agent for the board and shall execute all instruments, including reamortization agreements, satisfactions, and partial releases, that pertain to mortgages previously issued by the board. All instruments must be executed in the same manner as specified in section ~~6-09-26-1~~ 6-09-26. This section is self-executing and no assignment, power of attorney, or other instrument of transfer is necessary to establish the authority of the Bank of North Dakota to act on behalf of the board of university and school lands under this section.

**SECTION 6. AMENDMENT.** Section 23-09.3-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-09.3-01. Basic care facility - Defined.** As used in this chapter, the term "basic care facility" means any place, not licensed by the department of health and consolidated laboratories, hereinafter referred to as the department, under chapter ~~26-16~~ 23-16, operated by any person, institution, organization, or private or public corporation, in which five or more individuals not related by blood or marriage to the owner or manager of the place, are received, kept, and provided with food, shelter, and care for hire or compensation. Care for hire or compensation to assist residents with functional impairments includes routine maintenance and supportive care with activities of daily living and instrumental activities of daily living which need not be provided in an institutional setting by trained and skilled medical personnel, can be administered without any possible harm to the health of the individual in care, and has no significant relationship to medical care of any type. Any place that assists its residents with walking, dressing, or toilet usage, or which promotes supervision of person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a basic care facility subject to regulation by the department.

**SECTION 7. AMENDMENT.** Subsection 1 of section 23-18.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Nursing home" means such institutions or facilities defined by subsection 3 of section 43-34-01, with the exception of those institutions or facilities administered by state government or any agency or political subdivision thereof, but including those institutions or facilities constructed, acquired, leased, or rehabilitated under the provisions of this chapter, and also including any institution or facility defined by and included in section ~~50-10-01~~ 23-09.3-01.

**SECTION 8. AMENDMENT.** Section 23-21.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-21.1-03. Creation of perpetual care fund. Any organization subject to the provisions of this chapter which is organized or commences business in ~~the this state of North Dakota~~ and desires to operate as a perpetual care cemetery ~~shall~~, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on ~~the effective date of this chapter~~ July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by chapter 59-04 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and consolidated laboratories and the commissioner of banking and financial institutions.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1006.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.

5. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

**SECTION 9. AMENDMENT.** A new subsection to section 24-01-01.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Director" means the director of the department of transportation.

\* **SECTION 10. AMENDMENT.** Section 25-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-08.1. Notification prior to discharge. Prior to discharge the superintendent shall consult with the parent or guardian of the person of the developmentally disabled person, or with the court which ordered the commitment, and shall notify the director of the county social service board of the county wherein it is proposed that such person will assume residence and also shall ~~also~~ notify the executive director of the department of human services.

\*\* **SECTION 11. AMENDMENT.** Subsection 2 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under subsection 1 of section ~~26.1-38-08~~ 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19 through 26.1-03-22, 26.1-17-32, and 26.1-18-27, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

**SECTION 12. AMENDMENT.** Section 26.1-15.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-15.1-02. Fraternal benefit societies. Any incorporated society, order, or supreme lodge without capital stock, including one exempted under subdivision b of subsection 1 of section ~~26.1-15.1-38~~ 26.1-15.1-37 whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and

\* NOTE: Section 25-04-08.1 was also amended by section 9 of House Bill No. 1410, chapter 294.

\*\* NOTE: Section 26.1-03-17 was also amended by section 4 of Senate Bill No. 2266, chapter 301.

which provides benefits in accordance with this chapter, is a fraternal benefit society.

**SECTION 13. AMENDMENT.** Subsection 2 of section 26.1-38.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Records must be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. Records of such negotiations or meetings may be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under ~~this~~ section 26.1-38.1-12.

**SECTION 14. AMENDMENT.** Subsection 1 of section 26.1-40-02 of the North Dakota Century Code is amended and reenacted as follows:

1. No insurer may cancel a policy except for the following reasons:
  - a. Nonpayment of premium.
  - b. Because the motor vehicle operator's license or motor vehicle registration of either the named insured or any other operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been suspended, rescinded, canceled, or revoked during the policy period, or, if the policy is a renewal, during its policy period or for one hundred eighty days immediately preceding its effective date. This subdivision does not apply and the insurer may not cancel a policy where the operator whose license is suspended or revoked is excluded from coverage under the policy. The insurer shall notify the named insured of the possibility of excluding an operator whose license has been suspended or revoked prior to cancellation of the policy. When an operator whose license is suspended or revoked is excluded from coverage under the policy covering a secured motor vehicle, the owner of the motor vehicle who gives expressed or implied consent to the operator to use the motor vehicle is not relieved of liability under subsection 5 of section ~~26.1-41-03~~ 26.1-41-02.
  - c. Fraud or material misrepresentation made by or with the knowledge of any insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy.
  - d. The insured motor vehicle is:
    - (1) So mechanically defective that its operation might endanger public safety;
    - (2) Used in carrying passengers for hire or compensation; provided, however, that the use of an automobile for a car pool is not use of an automobile for hire or compensation;

- (3) Used in the transportation of flammables or explosives or for an illegal purpose;
  - (4) An authorized emergency vehicle; or
  - (5) Altered by an insured during the policy period so as to substantially increase the risk.
- e. The named insured moves to a state where the insurer is not licensed to do business.
  - f. Failure to pay dues or fees where payment of the dues or fees is a prerequisite to obtaining or continuing automobile insurance coverage.
  - g. A determination by the commissioner that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interests of policyholders, creditors, or the public.

\* SECTION 15. AMENDMENT. Section 26.1-42-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-42-01. Scope. This chapter applies to all kinds of direct insurance policies and contracts except life insurance policies, accident and health insurance policies, health service contracts, annuity contracts, contracts supplemental to life and accident and health insurance policies and annuity contracts, and any other policies and contracts within the application of section ~~26.1-38-01~~ 26.1-38.1-01, title insurance policies, surety contracts, credit insurance policies and contracts, mortgage guaranty insurance policies and contracts, and ocean marine insurance policies and contracts. This chapter must be liberally construed.

\*\* SECTION 16. AMENDMENT. Section 27-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

27-05.1-06. Rules of procedure in the institution of actions for divorce or separation - Residence requirement. ~~From and after the effective date of this chapter~~ After June 30, 1965, all civil actions instituted in divorce or separation cases venued in a county wherein a family court has been established and in which one of the parties resides, may not be filed or instituted unless either family court jurisdiction in such a case has been waived by court order or there has first been filed in the office of the clerk of the district court wherein the action is to be brought, a petition in substantially the following form:

- 1. The petition ~~shall~~ must be captioned substantially as follows:

DISTRICT COURT OF THE STATE OF  
NORTH DAKOTA  
For the County of -----  
Petition  
(Under the Family Court Act)

Upon petition of -----  
-----  
and concerning -----  
and -----  
-----

\* NOTE: Section 26.1-42-01 was also amended by section 25 of Senate Bill No. 2266, chapter 301.

\*\* NOTE: Section 27-05.1-06 was repealed by section 9 of Senate Bill No. 2268, chapter 328.



Respondent

To the Family Court:

2. The petition ~~shall~~ must:

- a. Allege that a controversy exists between the spouses.
- b. State the name and age of each minor child of the petitioner and spouse.
- c. State the name and address of the petitioner, or the names and addresses of the petitioners, and the names and address of counsel, if any.
- d. If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.
- e. State such other information as the court may by rule require.

\* SECTION 17. AMENDMENT. Subsection 1 of section 27-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The jury commission for each county shall compile and maintain a master list consisting of all lists of actual voters for the county supplemented with names from other lists of persons resident therein, such as lists of utility customers, property taxpayers, motor vehicle registrations, and driver's licenses, which the supreme court of this state from time to time designates. The supreme court shall initially designate the other lists within ninety days ~~following the effective date of this chapter after June 30, 1971,~~ and exercise the authority to designate from time to time in order to foster the policy of and protect the rights secured by this chapter (sections 27-09.1-01 and 27-09.1-02). In compiling the master list the jury commission shall avoid duplication of names.

\*\* SECTION 18. AMENDMENT. Subsection 48 of section 30.1-01-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, ~~sections 54-23-27 to section 54-23-29,~~ business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

\* NOTE: Section 27-09.1-05 was also amended by section 2 of Senate Bill No. 2385, chapter 332.

\*\* NOTE: Subsection 48 of section 30.1-01-06 was also amended by section 1 of House Bill No. 1193, chapter 595.

SECTION 19. AMENDMENT. Section 43-31-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-31-07. Qualifications of applicant. A person is qualified to receive a license as an examiner:

1. Who is at least eighteen years of age.
2. Who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness.
3. Who has not been convicted of an offense determined by the attorney general to have a direct bearing upon a person's ability to serve the public as an examiner, or who, following conviction of any offense, is ~~not~~ determined, pursuant to section 12.1-33-02.1, to be rehabilitated, or who has not been released or discharged under other than honorable conditions from any of the armed services of the United States.
4. Who has passed an examination conducted by the attorney general, or under his supervision, to determine his competency to obtain a license to practice as an examiner except that an examiner who was continually engaged in the administration of examinations for the two-year period immediately prior to July 1, 1975, or who had successfully completed a training course prior to July 1, 1975, from a school deemed acceptable by the attorney general, and who was previously exempt from the provisions of this chapter as an examiner in the exclusive employ of the state of North Dakota, a county, municipality, or political subdivision thereof as then provided by section 43-31-15 shall be exempt from the requirement of an examination.
5. Who has satisfactorily completed a polygraph examiners course approved by the attorney general and has satisfactorily completed not less than six months of internship training.

SECTION 20. AMENDMENT. Subsection 2 of section 47-18-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. This section does not apply to mortgages on property platted under chapter ~~40-50~~ 40-50.1.

SECTION 21. AMENDMENT. Subsection 2 of section 47-30.1-20 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A holder who has paid money to the administrator pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the administrator shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be

entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under ~~subsection 1 of section 47-30.1-29.~~

SECTION 22. AMENDMENT. Subsection 1 of section 47-30.1-37 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. This chapter does not relieve a holder of a duty that arose before July 1, 1985, to report, pay, or deliver property. A holder who has not complied with the law in effect before July 1, 1985, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection; ~~subject to subsection 2 of section 47-30.1-29.~~

SECTION 23. AMENDMENT. Subsection 6 of section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

6. The group child care or child care center facility maintains at all times during which ~~supplemental parental care~~ early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

\* SECTION 24. AMENDMENT. Section 50-26-01 of the North Dakota Century Code is amended and reenacted as follows:

50-26-01. Establishment of governor's council on human resources - Certain committees to constitute - Appointment. There is hereby established a governor's council on human resources to be maintained within the office of the governor. The council must consist of a committee on aging, a committee on children and youth, a committee on employment of ~~persons~~ people with disabilities, a commission on the status of women, and other committees having a related interest in human resources as may be appointed. Each committee member must be appointed by the governor for a term of three years, staggered so that the terms of one-third of the members of each committee expire July first of each year, except that initial appointments to the committees must be made on the basis of a one-year term for one-third of the members of each committee; a two-year term for one-third of the members of each committee; and a full three-year term for the remaining members of each committee. At least one-third of the members appointed to the committee on children and youth must have expertise in the prevention of child abuse and neglect. Each of the committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or the chairman's designated representative. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for the remainder of the unexpired term only.

SECTION 25. AMENDMENT. Section 50-26-03 of the North Dakota Century Code is amended and reenacted as follows:

50-26-03. Human resources committees - Organization - Expenses. The governor's committees on aging, children and youth, employment of ~~persons~~ people with disabilities, the commission on the status of women, and such

\* NOTE: Section 50-26-01 was also amended by section 5 of Senate Bill No. 2237, chapter 508.

other committees who have a related interest in human resources, at their first meetings after July first of each year, shall elect from their committee membership a chairman and vice chairman. Every meeting of each committee must be called by the chairman of the committee and must be presided over by the chairman unless the chairman is unable to act, in which case the vice chairman shall succeed to the powers and duties of the chairman. Each of the committee members is entitled to be paid for all necessary mileage and other actual expenses incurred in the performance of their official duties as members of such committees in the same amount and in the same manner as other state officials are paid.

**SECTION 26. AMENDMENT.** Section 51-13-03 of the North Dakota Century Code is amended and reenacted as follows:

**51-13-03. Finance charge limitation.**

1. A retail seller may contract for in a retail installment contract and charge, receive, and collect the finance charge computed on the principal balance of the contract or obligation from the date thereof until paid. A retail seller who complies with the disclosure provisions of this chapter is deemed a regulated lender under section 47-14-09.
2. The finance charge must be computed on the amount financed as determined under subdivision c of subsection ~~4~~ 2 of section 51-13-02. This finance charge may be precomputed on the amount financed calculated on the assumption that all scheduled payments will be paid when due and the effect of prepayment is governed by the provisions on rebate upon prepayment.
3. When a retail installment contract provides for unequal or irregular installments, the finance charge must be at the effective rate provided in subsection 1, having due regard for the schedule of installments.
4. The finance charge must be inclusive of all charges incident to investigating and making the contract, and for the extension of the credit provided for in the contract and no fee, expense, or other charge whatsoever may be taken, received, reserved, or contracted for except as provided in this section and in subdivision e of subsection ~~6~~ 2 of section 51-13-02 and for those items expressly provided for in the retail installment contract as set forth in subdivision c of subsection ~~4~~ 2 of section 51-13-02.

**\* SECTION 27. AMENDMENT.** Subsection 8 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

8. Except at the temporary alternate site provided by subdivision a of subsection ~~3~~ 4 of section 53-06.1-03, only the members of an organization licensed as a class A licensee by the attorney general under this chapter and their spouses and bona fide guests may participate in playing games of chance conducted by such licensed organization.

**\*\* SECTION 28. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**\* NOTE:** Section 53-06.1-06 was also amended by section 4 of House Bill No. 1597, chapter 549; by section 23 of Senate Bill No. 2001, chapter 28; by section 2 of Senate Bill No. 2219, chapter 545; and by section 1 of Senate Bill No. 2541, chapter 550.

**\*\* NOTE:** Subsection 1 of section 54-07-01.2 was also amended by section 3 of Senate Bill No. 2182, chapter 525.

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, ~~6-09-1-02~~ 6-09-02.1, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, 51-10-13, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk stabilization board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The board of pardons.
  - h. The state parole board.
  - i. The state board of public school education.
  - j. The teachers' professional practices commission.
  - k. The board of trustees for the teachers' fund for retirement.
  - l. The educational telecommunications council.
  - m. The state game and fish advisory board.
  - n. The health council.
  - o. The air pollution control advisory council.
  - p. The board of animal health.
  - q. The administrative committee on veterans' affairs.
  - r. The governor's council on human resources.
  - s. The North Dakota trade commission.
  - t. The North Dakota council on the arts.
  - u. The state historical board.
  - v. The Yellowstone-Missouri-Fort Union commission.
  - w. The state water commission.
  - x. The state water pollution control board.

**SECTION 29. AMENDMENT.** Subsection 1 of section 57-62-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Fifteen percent ~~shall~~ must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section ~~16~~ 13, chapter 626, 1979 Session Laws ~~shall~~ must also be deposited in the trust fund created pursuant to this subsection. The fund ~~shall~~ must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust ~~shall~~ must be used first to replace uncollectible loans made from the fund and the balance ~~shall~~ must be deposited in the state's general fund. Loan principal payments ~~shall~~ must be redeposited in the trust fund. Such trust fund ~~shall~~ must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.

\* **SECTION 30. AMENDMENT.** Subsection 6 of section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Bureau" means the North Dakota workers compensation bureau, or any director, ~~departments~~ department heads, assistants, or employees ~~designated by the commissioners~~ of the bureau, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.

**SECTION 31. AMENDMENT.** Subsection 3 of section 65-05-29 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A claim by the bureau for any payments made due to:
  - a. Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the bureau;
  - b. An adjudication by the bureau or by order of the board or any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the bureau;

\* **NOTE:** Section 65-01-02 was also amended by section 1 of House Bill No. 1324, chapter 713, and by section 23 of Senate Bill No. 2206, chapter 714.

- c. Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the bureau; or
- d. Overpayment due to application of section ~~65-05.1-09~~ 65-05-09.1.

SECTION 32. AMENDMENT. Section 65-05.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-03. Director of rehabilitation services - Duties. The director of rehabilitation services shall:

1. Direct the implementation of programs for individual workers compensation claimants in accordance with bureau determinations in compliance with the purpose of this chapter.
2. Cooperate, contact, and assist any government or private organization or agency or group of individuals or business or individual necessary or advantageous in carrying out the purpose of this chapter.
3. ~~Enforce the provisions of all vocational rehabilitation contracts as provided in section 65-05.1-05.~~
4. Keep such records, for statistical purposes, and provide such training necessary for the bureau staff as is necessary to keep pace with future developments in the area of rehabilitation services.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 55

SENATE BILL NO. 2489  
 (Senators Ingstad, Mathern, Holmberg)  
 (Representatives Jensen, St. Aubyn, Scherber)

### MARTIN LUTHER KING DAY

AN ACT to amend and reenact section 1-03-01 of the North Dakota Century Code, relating to holidays; and to repeal section 1-03-09 of the North Dakota Century Code, relating to Martin Luther King Day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

1-03-01. Holidays. Holidays are as follows:

1. Every Sunday.
2. The first day of January, which is New Year's Day.
3. The third Monday of January, which is Martin Luther King Day, in recognition of the life, legacy, and dream of Martin Luther King, Jr.
4. The third Monday in February, in recognition of the birthday of George Washington.
- ~~4~~ 5. The Friday next preceding Easter Sunday and commonly known as Good Friday.
- ~~5~~ 6. The last Monday in May, which is Memorial Day.
- ~~6~~ 7. The fourth day of July, which is the anniversary of the Declaration of Independence.
- ~~7~~ 8. The first Monday in September, which is Labor Day.
- ~~8~~ 9. The eleventh day of November, which is Veterans' Day.
- ~~9~~ 10. The fourth Thursday in November, which is Thanksgiving Day.
- ~~10~~ 11. The twenty-fifth day of December, which is Christmas Day.
- ~~11~~ 12. Every day appointed by the President of the United States or by the governor of this state for a public holiday.

Nothing in this section may be construed to prevent the holding of legislative sessions or the taking of final action on any legislative matter upon any of such holidays other than Sunday. Any action heretofore taken



upon any legislative matter upon any such holiday is valid and legal for all purposes.

SECTION 2. REPEAL. Section 1-03-09 of the North Dakota Century Code is repealed.

Approved March 28, 1991  
Filed March 28, 1991

## CHAPTER 56

HOUSE BILL NO. 1400  
(Representatives DeMers, Gabrielson, Tollefson)  
(Senators Schoenwald, Ingstad, Keller)

### **WORKERS' MEMORIAL DAY**

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the annual observance of workers' memorial day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is created and enacted as follows:

**Workers' memorial day.** The twenty-eighth day of April of each year is designated as workers' memorial day in remembrance of American workers who have been killed, injured, or diseased on the job.

Approved April 2, 1991  
Filed April 4, 1991

# AERONAUTICS

## CHAPTER 57

HOUSE BILL NO. 1139  
(Committee on Transportation)  
(At the request of the Aeronautics Commission)

### AERONAUTICS COMMISSION SPECIAL FUND

AN ACT to amend and reenact sections 2-05-10, 2-05-11, 2-05-11.3, 2-05-12, 2-05-18, 2-08-03, 2-08-04, 57-40.5-09, 57-43.3-06, and 57-43.3-07 of the North Dakota Century Code, relating to the distribution of funding for the aeronautics commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-10 of the North Dakota Century Code is amended and reenacted as follows:

2-05-10. Registration of airmen. Every individual who pilots, maintains, and certifies airworthiness of an aircraft or helicopter within this state shall register with the aeronautics commission and shall renew such registration every four years thereafter in which he pilots, maintains, or certifies airworthiness of an aircraft or helicopter within this state. The commission shall charge for any one or more such registrations for each individual or company, and for each four-year renewal thereof, a fee of eight dollars, except that the commission shall charge three dollars for each two-year registration or renewal thereof for student pilots. These fees must be deposited into the aeronautics commission special fund.

SECTION 2. AMENDMENT. Section 2-05-11 of the North Dakota Century Code is amended and reenacted as follows:

2-05-11. Aircraft registration - Fees. The following procedures governing fees and registration apply:

1. Except as provided in section 2-05-11.3, every aircraft or ultralight vehicle operating within this state for more than thirty days must be registered with the aeronautics commission for each year in which the aircraft or ultralight vehicle is operated within this state, subject to rules adopted by the commission. The commission shall charge a fee for each such registration. The following fees apply:

Gross Weight in Pounds	Registration Fees
0 to 500	\$ 15.00
501 to 1,000	30.00
1,001 to 1,500	38.00
1,501 to 2,000	45.00
2,001 to 2,500	60.00
2,501 to 3,000	75.00
3,001 to 3,500	90.00
3,501 to 4,000	105.00

4,001 to 5,000	120.00
5,001 to 6,000	150.00
6,001 to 7,000	180.00
7,001 to 8,000	210.00
8,001 to 9,000	240.00
9,001 to 10,000	270.00
10,001 to 15,000	300.00
15,001 to 20,000	450.00
20,001 to 30,000	600.00
30,001 to 40,000	900.00
40,001 to 50,000	1,200.00
50,001 to 75,000	1,500.00
75,001 to 100,000	2,250.00
100,001 and over	3,000.00

The fees must be reduced ten percent each year after the initial registration, or if the aircraft is one year old or older and being registered for the first time, the fees must be reduced ten percent for each year after the year of manufacture of the aircraft, until the fee reaches a figure equal to fifty percent of the original registration fee, which is the fee each year thereafter.

2. All weights must be based upon the maximum permissible take-off weight, except that the weights must be empty weights for all ultralight vehicles which are not certificated for maximum permissible take-off weight.
3. The aeronautics commission may charge a reasonable cost of service fee for registration of aircraft operated by state agencies, political subdivisions, or the civil air patrol in lieu of the regular registration fee.
4. There is hereby created an aeronautics distribution fund in the state treasury. All fees received under this section must be deposited in the aeronautics distribution commission special fund. The fees must be distributed as follows:
  - a. Seventy five percent of the fees so collected and deposited in the aeronautics distribution fund must be distributed by the state treasurer on vouchers prepared by the commission to the treasurer of the county of the registrant's residence or, if the registrant is not a resident of North Dakota, then to the treasurer of the county in which is located the airport at which the registrant's aircraft or ultralight vehicle is based. The county treasurer shall pay such remittances over to the municipality or airport authority operating an airport within the county. If there is more than one publicly owned or operated airport within the county, the moneys must be prorated between the public airports on the same ratio that the assessed value of each municipality with a public airport bears to the total assessed value of all municipalities with airports within the county. If there are no publicly owned or operated airports in the county, the remittances so paid to the county treasurer must be held and retained by the treasurer in a separate fund to be used in the future for airport purposes.

~~b. The remaining twenty-five percent must be transferred to the state general fund.~~

~~The distribution of the fees in the aeronautics fund as hereinbefore provided must be accomplished at the end of each calendar year.~~

SECTION 3. AMENDMENT. Section 2-05-11.3 of the North Dakota Century Code is amended and reenacted as follows:

2-05-11.3. Fee for a permanent registration - Issuance of registration decal - Disposition of fee. The fee for a permanent registration under section 2-05-11.2 is eighty-five dollars. The commission shall prepare a distinctive decal denoting permanent registration under section 2-05-11.2. That decal must be displayed in the aircraft in the same manner required for the registration decal otherwise issued under this chapter. ~~Of the fee received for the registration, the commission may retain ten dollars for administering sections 2-05-11.1 through 2-05-11.3 and providing the distinctive decal required under this section. The rest of the fee must be deposited in the aeronautics distribution fund for distribution as provided by section 2-05-11 commission special fund.~~

SECTION 4. AMENDMENT. Section 2-05-12 of the North Dakota Century Code is amended and reenacted as follows:

2-05-12. Licensing of air schools and aeronautics instructors. The commission may provide for the licensing of air schools, and of aeronautics instructors giving instructions in ground subjects pertaining to aeronautics. For each license it shall charge an annual fee of ten dollars. These funds must be deposited into the aeronautics commission special fund.

SECTION 5. AMENDMENT. Section 2-05-18 of the North Dakota Century Code is amended and reenacted as follows:

2-05-18. License for aerial spraying - Regulations - Penalties. No person may engage in aerial spraying without first obtaining a license for each aircraft used in such activities as provided in this section. Application must be made for such license to the North Dakota aeronautics commission upon forms provided by the commission for such purpose. Upon the payment of a license fee of fifteen dollars for each aircraft to be licensed, and upon compliance with such reasonable rules and regulations as may be promulgated by the aeronautics commission for the safety and protection of persons and property, the commission shall issue a license for such aircraft to be used in aerial spraying. Persons engaged in private spraying are required to pay same fee for the use of aircraft for this purpose, and shall comply with all rules and regulations promulgated by the commission for aerial spraying. The license and fees provided in this section are in addition to any other license or registration required by law, and the proceeds ~~shall~~ must be deposited in the aeronautics ~~distribution~~ commission special fund. ~~One-half of the proceeds must be distributed by the state treasurer from the aeronautics distribution fund to the county treasurer upon vouchers prepared by the commission, to be divided equally to approved publicly owned or operated airfields in said county. The remaining fifty percent must be transferred to the state general fund.~~

Any person violating any provision of this section or rules or regulations promulgated under the authority of this section shall be guilty of a class B misdemeanor.

**SECTION 6. AMENDMENT.** Section 2-08-03 of the North Dakota Century Code is amended and reenacted as follows:

**2-08-03. Aircraft dealer's license - Fees - Dealer's place of business.** No person, partnership, association, or corporation may engage in the business of buying, selling, leasing, or exchanging aircraft, or advertise or hold out to the public as being in the business of buying, selling, leasing, or exchanging of aircraft without first being licensed as provided in this chapter.

The aeronautics commission shall prescribe and furnish license and renewal license application forms. A nonrefundable fee of twenty-five dollars must accompany each application for each dealer location. A dealer's license expires on December thirty-first of each year, and application for renewal must be made before the expiration of the current dealer's license. For each annual twenty-five dollar license fee or renewal, the dealer must be issued one dealer's registration for one demonstrator aircraft. Additional dealer's demonstrator aircraft registrations must be issued to a licensed dealer upon the payment of ten dollars for each additional demonstrator aircraft, provided such demonstrator aircraft are not used for commercial purposes to produce rental or air taxi revenue, or used for aerial spraying while awaiting sale or trade. All new or used demonstrator aircraft which are for resale but are used by a dealer to produce commercial revenue, or air taxi or rental revenue or for aerial spraying must be registered with the commission and the annual registration fees paid in accordance with the laws of this state. Fees from license applications of aircraft dealers must be deposited with the state treasurer and credited to the state general aeronautics commission special fund. Fees received for additional aircraft registrations for demonstrator aircraft must be deposited with the state treasurer, who shall deposit such funds in the aeronautics distribution commission special fund, and such funds must be distributed by the state treasurer in accordance with section 2-05-11.

The aeronautics commission shall issue dealer's licenses only to dealers who maintain a permanent place of business on an airport open for public use, whether publicly or privately owned in the state of North Dakota, with runway length, aprons, and safe aircraft approaches adequate for fixed wing aircraft or helicopters of the type sold by such a dealer. An established central place on an airport means that such dealer has an enclosed office, building or structure owned or leased with adequate facilities and equipment for the maintenance, service, and repair of aircraft. The dealer shall maintain business records in the dealer's place of business. The dealer's place of business must be adequate to conduct an aircraft dealer's business where selling, trading, and bartering of aircraft may be conducted and may not be a residence or temporary quarters or so-called permanent quarters occupied pursuant to temporary arrangements. An applicant for an aircraft dealer's license cannot qualify with only a privately owned aircraft hangar as a place of business, which is usually used for storage of aircraft on an airport open for public use. An aircraft dealer to qualify for a dealer's license must maintain an aircraft or helicopter service and repair shop on an airport open for public use with a minimum of five thousand dollars in tools, equipment, aircraft parts, and

supplies, as determined by a representative of the director of the aeronautics commission.

The aeronautics commission shall issue a license only after inspection and approval of the aircraft dealer's facilities.

SECTION 7. AMENDMENT. Section 2-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2-08-04. Ultralight vehicle dealer's license - Fees - Dealer's place of business. No person, partnership, association, or corporation may engage in the business of buying, selling, leasing, or exchanging ultralight vehicles, or advertise or hold out to the public as being in the business of buying, selling, leasing, or exchanging of ultralight vehicles without first being licensed as provided in this chapter.

The aeronautics commission shall prescribe and furnish license and renewal license application forms. A nonrefundable fee of fifteen dollars must accompany each application for each dealer location. A dealer's license expires on December thirty-first of each year, and application for renewal must be made before the expiration of the current dealer's license. For each annual fifteen dollar license fee or renewal, the dealer must be issued one dealer's registration for one demonstrator ultralight vehicle. Additional dealer's demonstrator ultralight vehicle registrations must be issued to a licensed dealer upon the payment of ten dollars for each additional demonstrator ultralight vehicle. Fees from license applications of ultralight vehicle dealers shall be deposited with the state treasurer and credited to the state general fund. Fees and any other fees received for additional demonstrator ultralight vehicle registrations must be deposited with the state treasurer, who shall deposit such funds in the aeronautics distribution commission special fund, and such funds must be distributed by the state treasurer in accordance with section 2-05-11.

An ultralight vehicle dealer shall maintain a permanent place of business in North Dakota which may be off or on an airport; provided, if the place of the business is off an airport, such dealer shall maintain a cleared area of sufficient size and length to safely demonstrate ultralight vehicles without undue approach hazards, or hazards to other persons or property. The dealer shall maintain business records in the dealer's place of business. An ultralight dealer to qualify for a dealer's license shall maintain at least one flyable ultralight vehicle for demonstration purposes and shall maintain a minimum of five hundred dollars in tools, equipment, parts, or supplies to provide service for ultralight vehicles. The aeronautics commission has the option of inspection of each ultralight dealer prior to issuing a dealer's license or a renewal.

SECTION 8. AMENDMENT. Section 57-40.5-09 of the North Dakota Century Code is amended and reenacted as follows:

57-40.5-09. Allocation of revenue. All moneys collected and received under this chapter shall be transmitted monthly by the director to the state tax commissioner who shall pay them to the state treasurer to be credited to the state general fund aeronautics commission special fund. These funds may be used for airport construction or improvement projects as approved by the aeronautics commission in an amount as allowed by the commission.

SECTION 9. AMENDMENT. Section 57-43.3-06 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-06. Distribution of revenue. The tax collected by the commissioner pursuant to section 57-43.3-04 shall be deposited by the commissioner in the office of the state treasurer, who shall deposit such moneys in a special fund known as the state aeronautics commission ~~construction~~ special fund. These funds are hereby appropriated to the commission and shall be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the commission and approved by the office of management and budget, for commission administration and the purpose of matching of any funds made available by political subdivisions or airport authorities of this state, the state, or the United States, only if the political subdivision or airport authority is not qualified for or does not receive any funds under section 2-05-06.5. These funds shall be used for airport construction or improvement projects including airport administration and terminal buildings, hangars, landing strips for aircraft, and purchase of sites for airports or landing fields and easements; and for maintenance, clearing of sites, marking, lighting, and engineering and navigational aids, all related to aeronautics in amounts as the commission may determine and upon projects as the commission may approve.

SECTION 10. AMENDMENT. Section 57-43.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-07. Allocation of unclaimed refund revenue - Appropriation. The tax collected by the commissioner pursuant to section 57-43.3-02, upon which no refund is claimed, and those revenues remaining as unclaimed refunds shall be deposited in the office of the state treasurer, who shall deposit such moneys in a special fund known as the state aeronautics commission special fund. These funds are hereby appropriated to the commission and shall be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the commission and approved by the office of management and budget and shall be administered and expended by the commission for administration, construction, reconstruction, repair, maintenance, and operation of airports near communities, recreational areas, or parks including the international peace garden airport and for necessary expenses and for the purchase of land and easements for such facilities.

SECTION 11. EMERGENCY. Sections 1 through 9 of this Act are declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991



# AGRICULTURE

## CHAPTER 58

HOUSE BILL NO. 1271  
 (Representatives Thompson, Whalen, Payne)  
 (Senators Bowman, O. Hanson)

### BALLOT COUNT BASIS

AN ACT to amend and reenact sections 4-02-30, 4-22-48, and 23-18-03 of the North Dakota Century Code, relating to vote requirements on certain ballot questions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-30 of the North Dakota Century Code is amended and reenacted as follows:

4-02-30. Tax provided for to be submitted to vote. Whenever the board of county commissioners has voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and collection of the tax must be submitted to a vote of the qualified electors of the county. The county auditor shall certify and give notice of the submission of the question as ~~in such cases~~ provided by law. The ballots to be used at the election shall be in the following form:

For tax in aid of county fair	Yes //
	No //

If a majority of the ballots heretofore or hereafter cast on the question at any ~~such~~ election is in favor of continuing ~~such the~~ tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.

Whenever a petition addressed to ~~such the~~ board, asking the discontinuance of ~~such the~~ tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election, is filed in the office of the county auditor, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether or not the levying of ~~such the~~ tax shall be continued. The ballot must be in the following form:

Shall the board of county commissioners continue the annual levy of a tax in aid of county fair?	Yes //
	No //

If a majority of all the ballots cast on the question at ~~such the~~ election is in favor of discontinuing the tax, the board of county commissioners may not thereafter levy any tax under this chapter until the question of resuming ~~such the~~ annual levy and collection of the tax is submitted to a vote of the

qualified electors of the county. The ballots to be used at ~~such~~ the election must be in the following form:

Shall the board of county commissioners resume the  
annual levy of a tax in aid of a county fair? Yes // //  
No // //

If a majority of all of the ballots cast on the question at such the election is in favor of resuming the levy, the board of county commissioners shall resume the annual levy ~~thereof~~ as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.

Before every ~~such~~ election, the county auditor shall certify and give notice of the submission of the question as ~~in such cases~~ provided by law.

SECTION 2. AMENDMENT. Section 4-22-48 of the North Dakota Century Code is amended and reenacted as follows:

4-22-48. Conduct of referendum - Canvass of votes. A referendum upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed the board of election shall proceed to canvass the votes and the clerk of the board shall certify to the board of supervisors of ~~his~~ the clerk's district and to the state committee the result of the referendum. The clerk shall then securely wrap the ballots cast at ~~such~~ the referendum and shall express or mail the ~~same~~ ballots to the secretary of the state committee. The committee shall also canvass the ballots and verify the result. The secretary of the committee shall file the ballots in ~~his~~ the secretary's office. Upon the expiration of two years after such ballots were canvassed by the state committee they may be destroyed.

The state committee shall publish the results of the referendum after having canvassed the ballots and if the committee finds that a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

SECTION 3. AMENDMENT. Section 23-18-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-18-03. Fifteen-year levy authorized - Rate. If ~~two-thirds~~ sixty percent of the ballots cast on the question at such the election are in favor of the authorization of the levy, the board of county commissioners shall make an annual levy for a period of not more than fifteen years at the mill rate approved at ~~such~~ the election upon the taxable valuation of the taxable property in the county, which tax shall be spread and collected in the same manner as other taxes are collected. ~~Such This~~ This levy ~~shall is~~ is not be subject to the county levy limitations.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 59

SENATE BILL NO. 2136  
(Committee on Agriculture)  
(At the request of the State Seed Department)

### SEED ARBITRATION BOARD

AN ACT to amend and reenact sections 4-09-03.1, 4-09-08, 4-09-14.4, and 4-09-20.2 of the North Dakota Century Code, relating to the state seed arbitration board, free laboratory tests, periodic statements, and state seed arbitration board procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed ~~mediation~~ arbitration board. The state seed ~~mediation~~ arbitration board consists of the commissioner of agriculture, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the ~~chairman~~ chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees.

SECTION 2. AMENDMENT. Section 4-09-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax, sunflower, alfalfa, soybean, and edible bean seed to the commissioner for germination tests. No more than three samples per year per person may be examined and reported on free of charge. The commissioner, by rule with the approval of the seed commission, shall prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at ~~his~~ the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to sell agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with quarterly periodic statements of all seeds sold in North Dakota when requested by the seed commissioner. Each quarterly statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3. Statements that must be furnished for each ~~calendar quarterly~~ reporting period, must be delivered to the commissioner not later than thirty days after the end of

each ~~quarterly~~ reporting period, and must be accompanied by the appropriate fee. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or ~~his~~ the commissioner's authorized agent has the right at all reasonable times to examine the records of any permit holder to verify the correctness of its statements. The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually ~~instead of quarterly~~.

SECTION 4. AMENDMENT. Section 4-09-20.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed ~~mediation arbitration~~ board - Petition - ~~Mediation Arbitration~~ hearing. A seed labeler ~~and~~ or a seed customer shall petition the commissioner of agriculture in writing for a hearing to settle a dispute involving a seed transaction. The commissioner of agriculture shall submit the dispute to the seed ~~mediation arbitration~~ board, and the board shall ~~mediate arbitrate~~ the dispute ~~upon payment by the parties of a sum determined by the board to be sufficient to reimburse the board for the expenses of the mediation process, including reasonable compensation of board members.~~ The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for ~~mediation arbitration~~ proceedings, including a formula for reimbursement by the parties of the expenses of the ~~mediation arbitration~~ process.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 60

HOUSE BILL NO. 1094  
(Committee on Agriculture)  
(At the request of the State Seed Department)

### SEED OR GRAIN SELLERS' RECORDS

AN ACT to amend and reenact subsection 2 of section 4-09-15 of the North Dakota Century Code, relating to recordkeeping requirements for sellers of seed or grain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Grain~~ Seed or grain that is not intended for planting purposes.
  - a. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the seed department.
  - b. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain.
  - c. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 61

SENATE BILL NO. 2151  
 (Committee on Agriculture)  
 (At the request of the Oilseed Council)

### OILSEED HANDLERS

AN ACT to amend and reenact subsection 3 of section 4-10.2-02 and sections 4-10.2-08, 4-10.2-09, and 4-10.2-11 of the North Dakota Century Code, relating to first purchasers of certain crops, assessments, and penalties; to repeal sections 4-10.2-12 and 4-10.2-14 of the North Dakota Century Code, relating to penalties for nonpayment of assessment and violations of the chapter; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-10.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Designated handler" means any person who initially places sunflower, safflower, rapeseed or canola, crambe, or flax, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of sunflower, safflower, rapeseed or canola, crambe, or flax into any form. A grower selling the grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler. "First purchaser" means any person buying, accepting for shipment, or otherwise acquiring sunflower, safflower, rapeseed or canola, crambe, or flax, from a grower. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower where the actual or constructive possession of the oilseed is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim. For the purposes of assessments and reporting, the term includes a grower selling the grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax out of state, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm where they were produced to any storage facilities, packaging sheds, or processing plants located outside the state.

SECTION 2. AMENDMENT. Section 4-10.2-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-08. Assessments levied. An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a ~~designated handler~~ first purchaser and an assessment at the rate of

two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a designated handler first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A designated handler first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the designated handler first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler first purchaser. A designated handler first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

Every designated handler first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the designated handler first purchaser.

Every designated handler first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every designated handler first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "oilseed fund" to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 3. AMENDMENT. Section 4-10.2-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the council for a refund application blank. Upon the return of said blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler first purchaser, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above, then the grower is presumed to have

agreed to such assessment. However, a grower, for any reason, having paid the assessment more than once on the same sunflower, safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the sunflower, safflower, rapeseed or canola, crambe, and flax assessment and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of sunflower, safflower, rapeseed or canola, crambe, and flax.

SECTION 4. AMENDMENT. Section 4-10.2-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-10.2-11. Collection of unpaid assessment Penalty. If a designated handler fails to pay the assessment provided in this chapter the council may enforce collection in any appropriate court within this state.~~

1. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and not paid by the date that the assessment becomes due is delinquent and the council may levy a penalty on such delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date. The collection of any assessment or penalty must be made in an appropriate court within this state.

SECTION 5. REPEAL. Sections 4-10.2-12 and 4-10.2-14 of the North Dakota Century Code are repealed.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 62

SENATE BILL NO. 2191  
(Committee on Agriculture)  
(At the request of the Edible Bean Council)

### EDIBLE BEAN HANDLER ASSESSMENT

AN ACT to amend and reenact subsection 3 of section 4-10.3-02 and sections 4-10.3-08 and 4-10.3-11 of the North Dakota Century Code, relating to the definition of a designated handler of edible beans and to assessments and penalties; and to repeal sections 4-10.3-12 and 4-10.3-14 of the North Dakota Century Code, relating to penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-10.3-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Designated handler" means any person who initially places edible beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling ~~his~~ the grower's unharvested edible beans, or delivering ~~his~~ the grower's edible beans from the farm on which they are produced to storage facilities, packing sheds, or processing ~~plant~~, plants within the state, is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested edible beans out of state, or delivering the grower's edible beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.

SECTION 2. AMENDMENT. Section 4-10.3-08 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-08. Tax levies - Collection - Reports. Effective July 1, 1977, an assessment at the rate of five cents per hundredweight [45.36 kilograms] must be levied and imposed upon all edible beans grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of edible beans.

A designated handler of edible beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the

designated handler. A designated handler may not sell, process, or ship any edible beans until it has furnished a certificate as required by this section.

Every The first designated handler in North Dakota of edible beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of five cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all edible beans subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw edible beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of edible beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "edible bean fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 3. AMENDMENT. Section 4-10.3-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-10.3-11. Collection of unpaid assessment Penalties. If a designated handler fails to pay the assessment provided in this chapter, the council may enforce collection in any appropriate court within this state.~~

1. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and unpaid by the date that the assessment becomes due is delinquent and the council may levy a penalty against the designated handler on such delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date. The collection of any assessment or penalty must be made in an appropriate court within this state.

SECTION 4. REPEAL. Sections 4-10.3-12 and 4-10.3-14 of the North Dakota Century Code are repealed.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 63

SENATE BILL NO. 2282  
(Senators Thane, Tallackson, Nelson)  
(Representatives Nicholas, Miller, Nowatzki)

### CORN UTILIZATION COUNCIL

AN ACT to provide for a North Dakota corn utilization council; to provide for an assessment on corn production; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture or the commissioner's designated representative.
2. "Corn" means all varieties of corn marketed in the state except sweet corn or popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means any person accepting for shipment, or otherwise acquiring an interest in or to corn from a grower. The term includes any person having a claim against the producer, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Grower" means a person who plants, raises, and harvests corn.
6. "Marketed in this state" means the sale of corn to a designated handler residing in or doing business in this state and actual delivery of the corn in this state.
7. "Participating grower" means a grower who has paid the assessment on corn production under this Act and who has not applied for a refund of the assessment.
8. "Voting grower" means a grower who has paid the assessment under this Act, whether or not the grower has applied for a refund.

SECTION 2. North Dakota corn utilization council - Members - Election - Term. The North Dakota corn utilization council must be composed of one member elected from each district established by section 3 of this Act. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that

initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this Act, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office. For the initial council, the North Dakota corn growers association shall nominate two candidates for each position. Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district. Additional candidates may be nominated by written petition of twenty-five growers from the respective district. A list of all the candidates must be presented to the commissioner who shall cooperate with the cooperative extension service and hold the first election no later than August 15, 1991. The council shall administer all elections thereafter, and may request the assistance of the commissioner. Beginning in 1993, the elections must be conducted no later than April first of each year. Prior to the expiration of a member's term, the council shall appoint a nominating committee made up of three participating growers who reside in the member's district. The committee shall nominate two resident participating growers as candidates for the office. Each candidate must be supported by a petition bearing the signatures of twenty-five growers from the candidate's district. Additional candidates may be nominated by a written petition of twenty-five growers from the district. No council member may serve more than two consecutive four-year terms. When a member's office is vacant, the council, before beginning the nominating process, shall publish a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

SECTION 3. Corn districts. The following corn districts are established:

1. District one consists of Richland County.
2. District two consists of Cass, Traill, and Steele counties.
3. District three consists of Benson, Burke, Bottineau, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams counties.
4. District four consists of Barnes, Eddy, Foster, Griggs, and Stutsman counties.
5. District five consists of Sargent and Ransom counties.
6. District six consists of Dickey and Lamoure counties.
7. District seven consists of all remaining counties in this state where corn is grown.

SECTION 4. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. Each council member is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any

member who receives compensation or salary as a regular state employee or official.

**SECTION 5. Expenditure of funds.** The council or its designated agent shall approve every expenditure of funds made pursuant to this Act and submit the approved expenditure upon an itemized voucher to the office of management and budget for approval.

**SECTION 6. Council authority.** In the administration of this chapter, the council may:

1. Contract and cooperate with any person for market maintenance and expansion, utilization research, transportation, and education.
2. Expend the funds collected pursuant to this Act and appropriated for its administration.
3. Appoint, employ, bond, discharge, fix compensation for, and prescribe the duties of personnel.
4. Accept donations of funds, property, services, or other assistance from any source for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the assessments authorized by this Act, and to sue and be sued in the name of the council.
6. Provide educational and informational materials.

**SECTION 7. Certification of designated handlers.** A designated handler shall file with the council a form containing the name under which the designated handler is transacting business within the state; the designated handler's places of business; the location of loading and shipping places of the designated handler's agents; if a partnership, the names and addresses of the persons constituting the firm partnership; and if a corporation, the corporate name and the names and addresses of the principal officers and agents in this state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any corn until it has a certificate as required by this section.

**SECTION 8. Assessment.** Effective July 1, 1991, an assessment at the rate of one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn marketed in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.

**SECTION 9. Collection of assessment.** Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler.

**SECTION 10. Records by designated handlers.** Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a

manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of an account designated as the corn fund to be used exclusively to carry out this Act. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

**SECTION 11. Nonparticipating growers - Refunds.** The council shall develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed, and shall cooperate with governmental agencies and private businesses engaged in the purchase of corn. Any grower subject to the assessment provided by this Act, within ninety days following an assessment or final settlement, may apply to the council for a refund application. If the refund application is properly executed by the grower, returned within ninety days of the date it was mailed to the grower, and accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund is made within the period prescribed above, the grower is presumed to have agreed to the assessment. However, if a grower pays the assessment on the same corn more than once, the grower is entitled to a refund upon furnishing the council with proof of the overpayment.

**SECTION 12. Advisory referendum by voting growers.** Whenever fifteen percent of the voting growers petition the council, the council shall conduct an advisory referendum to determine whether the assessment imposed by this Act should be changed. The referendum may be conducted only among voting growers who have paid all assessments pursuant to this Act for the preceding year. The ballots must be prepared by the council and available at each county extension office for a vote on a date set by the council. Each ballot must be accompanied by a notice stating the date and place where the council will open and tabulate the ballots and stating that any voting grower may be present. Voting growers who reside outside the state or voting growers within the state who expect to be absent from their county on the day of the vote may request an absentee ballot. The council shall provide to any voting grower an absentee ballot upon request beginning thirty days prior to the vote. A voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote. The council shall provide a statement form upon request. All absentee ballots and statements must be received by the council at least two working days prior to a vote. If a majority of the voting growers vote for the proposed change, the council shall certify the result to the commissioner and request that the commissioner prepare appropriate proposed legislation for submission to the next legislative assembly.

**SECTION 13. Collection of unpaid assessment.** If a designated handler fails to pay the assessment provided by this Act, the council may enforce collection in any appropriate court within this state.

**SECTION 14. Penalty for nonpayment of assessment.** A designated handler who fails to pay the assessment provided by this Act on the date the assessment becomes due is delinquent. The council may levy a penalty on that designated handler in the amount of ten percent of the assessment due, plus

interest at the rate of twelve percent per annum from the due date. The penalty and interest must be collected in the manner prescribed by this Act.

SECTION 15. Records of council - Inspection. All records of the council must be available for inspection at the council office during regular business hours.

SECTION 16. Penalty. Any person who willfully violates this Act is guilty of a class B misdemeanor.

SECTION 17. APPROPRIATION. There is hereby appropriated from the corn fund the sum of \$600,000, or so much thereof as may be necessary, to the North Dakota corn utilization council for the purpose of carrying out this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 64

HOUSE BILL NO. 1571  
 (Representatives Miller, Muhs, Wilkie)  
 (Senator Marks)

### BEES

AN ACT to create and enact a new section to chapter 4-12.2 of the North Dakota Century Code, relating to revocation of registration of an apiary; to amend and reenact sections 4-12.2-01, 4-12.2-04, 4-12.2-04.1, 4-12.2-06, 4-12.2-07, 4-12.2-08, 4-12.2-14, 4-12.2-18, 4-12.2-19, 4-12.2-20, 4-12.2-21, 4-12.2-22, and 4-12.2-24 of the North Dakota Century Code, relating to licensure of beekeepers, and registration, identification, and certification of apiaries; to repeal sections 4-12.2-09, 4-12.2-10, 4-12.2-11, 4-12.2-12, and 4-12.2-13 of the North Dakota Century Code, relating to a two-mile radius restriction for apiary locations; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.
2. "Apparently disease free" means being within accepted tolerance levels as established by rule.
3. "Beekeeper" means any person who owns and maintains or leases and maintains one or more colonies of bees and maintains the bees in this state.
- ~~3-~~ 4. "Bees" means honey producing insects of the genus Apis, including all life stages of such insects. ~~The word "bees" as used in this chapter term is not limited to the common honey bee but includes Africanized bees.~~
- ~~4-~~ 5. "Colony" means the hive and its equipment including bees, comb and honey, and brood.
5. "Commercial apiary" means an apiary where ~~twenty four or more colonies of bees are kept and all vacant locations established pursuant to sections 4-12.2-04 and 4-12.2-13.~~
- ~~6-~~ "Commercial operator" means any beekeeper who maintains more than one hundred colonies of bees.



- ~~7-~~ 6. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.
- ~~8-~~ 7. "Department" means the department of agriculture.
- ~~9-~~ 8. "Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.
- ~~10-~~ 9. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives; ~~and also includes any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies; and those items used in the operation of a honey house.~~
- ~~11-~~ "Hobby operator" means any beekeeper who maintains one hundred or fewer colonies of bees.
- ~~12-~~ "Noncommercial apiary" means an apiary where twenty-three or fewer colonies of bees are kept.
- ~~13-~~ "Pollination location" means an apiary established pursuant to section ~~4-12.2-10.~~
- ~~14-~~ "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land. However, any person leasing land for the primary purpose of establishing an apiary thereon is not a property owner within the meaning of this definition.
- ~~15-~~ "Property owner location" means an apiary established pursuant to section ~~4-12.2-11.~~
10. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land.

SECTION 2. AMENDMENT. Section 4-12.2-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-04. Beekeeper's license required.

1. A beekeeper ~~No person~~ may not maintain bees in this state ~~unless the beekeeper has~~ without first obtaining a valid beekeeper's license. ~~Annually,~~ ~~on~~ On or before the first day of ~~May~~ March in each year, each beekeeper shall apply to the commissioner, on a form to be furnished by the commissioner, for a beekeeper's license ~~except that initial licensees shall within ten days after first acquiring bees in this state apply to the commissioner for a beekeeping license.~~
2. Each application, ~~for an initial license or annual renewal,~~ must ~~set forth~~ include the applicant's name of the applicant, address, and telephone number, the total number of colonies to be maintained ~~within in~~ this state, the name of the owner of the bees ~~if different from the applicant,~~ and the name and address of all persons, other than the applicant, who are responsible for

maintaining the bees within the state. The application must be signed by the applicant ~~and~~, the owner of the bees ~~if different from the applicant~~, and all persons responsible for maintaining the bees within this state. If the applicant ~~is does not the owner of own~~ the bees, the application must disclose the nature of the relationship between the owner and the applicant. If the applicant is leasing the bees from the owner, a copy of a ~~written~~ the lease agreement ~~between the owner and the lessee~~ must be submitted with the application.

3. ~~The application must designate the number of colonies to be maintained at noncommercial apiaries. The application must also specify which apiaries, if any, will remain vacant during the current license period. The license required by this section is not transferable. No person may bring bees or equipment into this state without obtaining an entrance permit pursuant to section 4-12.2-20.~~
4. Each application for an initial license or renewal must also state the applicant's name, place of residence, and post-office address must include the name, address, and telephone number of a resident agent who is authorized to accept service of process, notice, or demand arising from the beekeeper's activities under this chapter and for which the law requires or permits service upon the beekeeper.

SECTION 3. AMENDMENT. Section 4-12.2-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-04.1. Application of minors for beekeeper's license - Liability for minor. ~~A person must be at least eighteen years of age to be licensed as a beekeeper in this state. However, a~~ A person who is less than eighteen years of age may be licensed as a beekeeper, if that person's application for license is signed by either the mother, father, or legal guardian of the applicant. Any civil or administrative liability for violation of the beekeeping laws of this chapter by a beekeeper who is less than eighteen years of age must be imputed to the person who has signed the application of that beekeeper for a license, which person is jointly and severally liable with the beekeeper.

SECTION 4. AMENDMENT. Section 4-12.2-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-06. Prevention of disease - Assessment of fees. In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit the following fees with the application-

1. ~~Hobby operator - ten cents per colony for each colony maintained in this state.~~
2. ~~Commercial operator - twenty-five~~ thirty cents per colony for each colony maintained in this state.

The commissioner may not issue a beekeeper's license until all civil penalties and all fees required by this section and section 4-12.2-05 are paid-

SECTION 5. AMENDMENT. Section 4-12.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall ~~make application apply~~ for registration of all apiaries ~~which that are or will be~~ maintained by the beekeeper within the state at the same time an application for license is made. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:
  - a. The location of each apiary, ~~setting forth specifically the type of apiary, the location~~ to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
  - b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
  - c. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.
2. New ~~commercial~~ apiaries may be submitted for registration with the department at any time.
3. ~~Priority in time of application gives the superior right to occupy a location.~~
4. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.

SECTION 6. AMENDMENT. Section 4-12.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-08. Revocation of location by property owner. The property owner ~~of the land~~ on which an apiary is located may revoke the permission granted a beekeeper to place an apiary at that location by providing written notice to the department and the beekeeper. This section does not relieve the property owner from any liability to the beekeeper for the violation of rights granted by a lease or other legal agreement between the beekeeper and the property owner.

SECTION 7. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Revocation of registration of an apiary. The commissioner of agriculture may cancel the registration of an apiary when the bees located on the apiary site are causing a nuisance as defined in chapter 42-01.

SECTION 8. AMENDMENT. Section 4-12.2-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-14. Identification of colonies. All colonies must be identified as prescribed by the commissioner by rule. Each beekeeper shall specifically state on the application for license, each year, what form of identification will be used by that beekeeper to identify colonies. A beekeeper may not list another beekeeper's brand as an identifying mark on the application or otherwise use another beekeeper's brand to identify that beekeeper's colonies unless the other beekeeper's brand is not being used by that beekeeper to identify any bees maintained in North Dakota and written permission is obtained from the other beekeeper to use the brand post a board or weatherproof placard bearing the beekeeper's name, address, and telephone number at or near the main entrance of each apiary, or on a bee hive. The board or placard must measure at least eight inches [20.32 centimeters] high by eleven inches [27.94 centimeters] long. The letters and numbers must be at least one-half inch [1.27 centimeters] high and must be legible. The commissioner may approve, in writing, alternative sign or lettering dimensions. Failure to post each apiary causes the apiary, all equipment, and bees to be deemed abandoned and subject to seizure by the state bee inspector.

SECTION 9. AMENDMENT. Section 4-12.2-18 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-18. Certificate of health - Issuance. At the request of the beekeeper, the commissioner, after an official inspection has been made, if a certificate of health is required for the interstate movement of bees and equipment, the beekeeper shall request the state bee inspector to make an official inspection for that purpose. If the inspector finds that the bees and equipment have been found to be are apparently disease free, and if all fees and civil or criminal penalties have been paid, the state bee inspector shall issue a certificate of health signed by the bee inspector. The certificate of health must state that the bees and equipment have been inspected; the date of the inspection; and that they are apparently free of disease. If for any reason, an additional inspection is required prior to the issuance of a certificate of health, the beekeeper shall submit to the commissioner a fee set by the commissioner to cover the costs of the additional inspection.

SECTION 10. AMENDMENT. Section 4-12.2-19 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-19. Infected bees and equipment - Sale or exposure. No person may sell, barter, offer for sale or barter, move, transport, deliver, ship, or offer for shipment within this state, any bees or equipment which has not received a certificate of health from the inspector having evidence of disease without written permission of the department. No person may expose any bees or equipment in any place in such a manner that disease could be transmitted or disseminated therefrom.

SECTION 11. AMENDMENT. Section 4-12.2-20 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-20. Shipment into state - Permit - Fees. Before any person transports any bees or used equipment into this state, that person must

obtain an entrance permit from the bee inspector. The applicant for an entrance permit shall submit:

1. A copy of the certificate of health issued by the official bee inspector, or equivalent official in another state or country, certifying the bees and equipment have been inspected within ninety days prior to the date of shipment and have been found to be free from any contagious or infectious disease. Possess a North Dakota certificate of health issued within the past twelve months for all colonies for which an entrance permit is requested, or obtain a certificate of health from the state bee inspector or from an equivalent official in another state or country, certifying that the bees and equipment have been inspected within the last ninety days and have been found to be apparently disease free;
2. Submit a complete description of the shipment; and
3. Such Submit any other information as may be required by rule.

Entrance permits for applicants whose applications are received after March first are effective sixty days after the date of the application for a license. For purposes of the 1991 season, the due date for license applications is May first. Immediately upon the arrival in this state of any bees or equipment, the beekeeper shall comply with this chapter. Upon showing of good cause, the commissioner may on a case-by-case basis waive the sixty-day waiting period.

SECTION 12. AMENDMENT. Section 4-12.2-21 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-21. Abandoned apiary and abandoned equipment - Seizure, destruction, or sale. Any apiary, equipment, or bees not regularly maintained and attended in accordance with this chapter or any rules adopted pursuant to this chapter or which comprises a hazard or threat to disease control in the beekeeping industry may be considered abandoned and will be subject to seizure by the state bee inspector. Any bees not properly hived, or hives or equipment not properly stored, so as to prevent possible spread of disease may be considered abandoned bees or equipment. Any diseased bees and equipment which have been seized may, when necessary, be immediately burned or otherwise destroyed and any bees or equipment not destroyed may be sold at public auction. The proceeds, after the cost of sale ~~is~~ and all costs resulting from the action are deducted, must be returned to the former owner or the former owner's estate; provided, however, that before causing the bees or equipment to be sold, the bee inspector shall give the beekeeper or agent a written notice at least five days prior to the date on which the property will be sold. This notice is to be given by registered mail or by personal service upon the owner, or person in charge, of such property.

SECTION 13. AMENDMENT. Section 4-12.2-22 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-22. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. A person who violates this chapter or any rules adopted under this chapter is guilty of a class A misdemeanor.

2. In addition to criminal sanctions which may be imposed pursuant to subsection 1, a person found guilty of violating this chapter or rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The department may, in accordance with the laws of this state, maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.
5. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document may be subject to the penalties provided in this chapter.

SECTION 14. AMENDMENT. Section 4-12.2-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-24. Service of process on beekeeper.

- 1- Each beekeeper shall have and continuously maintain in this state an agent, who is authorized to accept service of any process, notice, or demand arising from the beekeeper's activities under this chapter and for which the law requires or permits service upon the beekeeper.
- 2- The name and address of the beekeeper's authorized agent must be submitted with the application for license required under section 4-12.2-04. Failure to submit the name and address of the beekeeper's agent is a ground for the denial of a license.
- 3- Whenever a beekeeper fails to appoint an agent in this state, or whenever Whenever the beekeeper or the beekeeper's agent cannot be found with reasonable diligence, the commissioner is an agent of such the beekeeper and service of any process, notice, or demand may be made upon the commissioner. If any process, notice, or demand is served on the commissioner, the commissioner shall forward it by certified mail to the beekeeper at the address submitted to the department under section 4-12.2-04 and service must be deemed complete whether or not the beekeeper claims the certified mail.
- 4- The commissioner shall keep a record of all processes, notices, and demands served upon the commissioner under this section, and shall record the time of such service and the action taken.
- 5- This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a beekeeper in any other manner permitted by law.

SECTION 15. REPEAL. Sections 4-12.2-11 and 4-12.2-12 of the North Dakota Century Code, and sections 4-12.2-09, 4-12.2-10, and 4-12.2-13 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 65

HOUSE BILL NO. 1118  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### **ALFALFA LEAFCUTTER BEES**

AN ACT to repeal chapter 4-12.3 of the North Dakota Century Code, relating to the regulation of alfalfa leafcutter bees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 4-12.3 of the North Dakota Century Code is repealed.

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

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 66

SENATE BILL NO. 2591

(Lindaas)

(Approved by the Committee on Delayed Bills)

### POULTRY LAW PENALTIES

AN ACT to amend and reenact section 4-13.2-06 of the North Dakota Century Code, relating to violations of the poultry law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-13.2-06 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-06. Penalty. ~~A violation of this chapter, or the rules and regulations promulgated thereunder, constitutes an infraction, and, in addition, the commissioner of agriculture may issue under, and may restrain by injunction the continuance of any operations covered by this chapter.~~

1. Any person who violates any provision of this chapter or rule adopted under this chapter is guilty of a class A misdemeanor.
2. Any person who violates any provision of this chapter or rule adopted under this chapter may be subject to a civil penalty not to exceed one thousand dollars for each violation. This penalty may be adjudicated by the courts or by the commissioner of agriculture through an administrative hearing conducted by an independent hearing officer pursuant to chapter 28-32.
3. The commissioner of agriculture may maintain an appropriate civil action in the name of the state against any person violating this chapter or rule adopted under this chapter.
4. Any person who knowingly makes a false statement, representation, or certification in any application, record, report, or other document is subject to the penalties provided in this chapter.
5. For purposes of this section, "person" means an individual, partnership, corporation, association, cooperative, or any business entity.

Approved April 16, 1991

Filed April 18, 1991

## CHAPTER 67

SENATE BILL NO. 2342  
 (Senator Nelson)  
 (Representative Belter)

### NORTHERN CROPS COUNCIL MEMBERSHIP

AN ACT to amend and reenact sections 4-14.2-02 and 4-14.2-03 of the North Dakota Century Code, relating to the northern crops institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.2-02. Northern crops council - Establishment - Chairman - Meetings - Compensation.

1. The northern crops council is hereby established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
  - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
  - b. A member of the North Dakota wheat commission selected by that commission.
  - c. A member of the North Dakota oilseed council selected by that council.
  - d. A member of the North Dakota barley council selected by that council.
  - e. A member of the North Dakota soybean council selected by that council.
  - f. The commissioner of agriculture or the commissioner's designee.
  - ~~e~~ g. Five ~~Four~~ to ~~seven~~ five producers of northern crops selected by the members designated in subdivisions a through ~~d~~ f.
  - ~~f~~ h. Up to two representatives of industries which process northern crops selected by the members designated in subdivisions a through ~~d~~ f.
2. The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the commissioner of agriculture, is three years, and those members are limited to two 3-year terms. Each

term of office begins with the first reorganizational meeting after the date of appointment.

3. The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subdivisions a and ~~e~~ f of subsection 1 are not eligible to serve as chairman.
- ~~3-~~ 4. The council shall meet at least three times annually at such times and places as must be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

SECTION 2. AMENDMENT. Section 4-14.2-03 of the North Dakota Century Code is amended and reenacted as follows:

4-14.2-03. Purpose - Powers and duties. The purpose of the northern crops institute is to provide technical and marketing assistance through specialized training courses and technical services which facilitate domestic and market development and expanded sales of northern grown crops. The institute shall render services consistent with its purpose which include, but are not limited to:

1. In-plant consultations for the purpose of discussing grain crop quality problems, product manufacturing, and possible purchasing methods and standards.
2. Short courses in product milling and processing, plant management, county elevator management, grain grading, and marketing of crops.
3. Educational and vocational training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.
4. Short-term investigations, consultation, evaluation, and research to solve technical problems involved in the maintenance of quality and utilization of northern crops.
5. Annual surveys and quality analyses of new northern crops and monitoring of the quality and condition of commodities in market channels.
6. Research on northern crop damage problems and solutions.
7. Identification of problem areas in marketing northern crops abroad.
8. Preparation of instructional, informational, and reference publications on the end use of northern crops, technical aspects of marketing northern crops, and utilization of northern crops for distribution domestically and abroad.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 68

HOUSE BILL NO. 1030  
(Legislative Council)  
(Interim Budget Committee on Government Finance)

### **STATE FORESTER RESERVE ACCOUNT**

AN ACT to create and enact a new section to chapter 4-19 of the North Dakota Century Code, relating to a state forester reserve account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-19 of the North Dakota Century Code is created and enacted as follows:

State forester reserve account. The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account after receiving approval from the legislative council's budget section and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 69

SENATE BILL NO. 2520  
(Lindaas, Marks, Meyer)

### WHEAT COMMISSION VOTING

AN ACT to amend and reenact section 4-28-03 of the North Dakota Century Code, relating to voting entitlement for the North Dakota wheat commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district ~~he~~ the member represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of ~~his~~ the member's income therefrom for at least five years next preceding ~~his~~ the member's appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the commissioner of agriculture, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, and the president of the North Dakota grain dealers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until ~~his~~ the member's successor has been selected and has qualified except that ~~the~~ the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. Each producer whose name appears as a wheat producer on the list of the county agricultural stabilization committee, if present in person, is entitled to vote. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable. Votes must be canvassed by the county agent and certified by ~~him~~ the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 70

SENATE BILL NO. 2253  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### DAIRY REGULATIONS

AN ACT to amend and reenact sections 4-30-01, 4-30-02.1, 4-30-03.2, 4-30-11, 4-30-12, 4-30-15, 4-30-16, 4-30-18, 4-30-20, 4-30-21, subsection 5 of section 4-30-22, sections 4-30-26, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-37, 4-30-38.1, 4-30-45, 4-30-47, and 4-30-51 of the North Dakota Century Code, relating to dairy regulations; and to repeal section 4-30-44 of the North Dakota Century Code, relating to brands or marks for milk product containers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated milk or adulterated milk products" means any milk or cream to which water has been added, or any milk or milk product which contains any unwholesome substance, or any other inhibitors, or which, if defined by state law or by the rules of the dairy department, does not conform with its definition.
2. "Agent" means a person ~~who is~~ authorized by another person to act ~~for him~~ on behalf of another person in dealing with a third person.
3. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the dairy commissioner as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the dairy department.
4. "Butter" means that product usually known by that name which is manufactured exclusively from milk, cream, or both, with or without common salt, with or without additional coloring matter.
5. "Buttermilk" means a fluid product resulting from the churning of milk or cream.
6. "C.I.P." means a method of cleaning, commonly called "cleaned-in-place" whereby equipment is cleaned by circulating washing solutions and sanitizers through it and thereby eliminating the necessity of dismantling the equipment.

7. "Canned milk" means milk sealed in metal cans for sale to consumers. It is commonly a sweetened, condensed and sterile fluid or evaporated milk.
8. "Cheese" means that product which is usually known by that name which is the sound, solid and ripened product of milk and cream made by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.
9. "Cheese factory" means a place where cheese is made for commercial purposes.
10. ~~"Collecting station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.~~
- ~~11.~~ "Commercial carrier" means a person or business which is subject to regulation by state or federal authorities.
- ~~12.~~ 11. "Commissioner" means the dairy commissioner.
- ~~13.~~ 12. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
- ~~14.~~ 13. "Concentrated milk" means a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk. When recombined with water, in accordance with instructions printed on the container, the resulting product conforms with the standards for milkfat and solids-not-fat of milk.
- ~~15.~~ 14. "Concentrated milk products" means and includes homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated flavored milk, concentrated flavored drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be, and which, when recombined with water in accordance with instructions printed on the container, conform with the standards of the corresponding milk products.
- ~~16.~~ 15. "Condensed milk or evaporated milk" means milk which has been concentrated by removing water with or without the addition of sugar.
- ~~17.~~ 16. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
- ~~18.~~ 17. "Cottage cheese" means the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria, with or without enzymatic action, to pasteurized skim milk or pasteurized reconstituted skim milk.



- ~~19.~~ 18. "Cream" means the fatty liquid or semiliquid separated from milk, with or without the addition thereto of milk or skim milk.
- ~~20.~~ 19. "Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.
- ~~21.~~ 20. "Creamed cottage cheese" means the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk.
- ~~22.~~ 21. "Creamery" means a place where butter is made for commercial purposes.
- ~~23.~~ 22. "Cultured buttermilk" means a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk.
- ~~24.~~ 23. "Cultured milk" means a fluid or semifluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized milk, pasteurized reconstituted milk, or pasteurized concentrated milk.
- ~~24.1.~~ 24. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
25. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
26. "Department" means the dairy department.
27. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
28. "Dry buttermilk powder or dry buttermilk" means buttermilk dehydrated to dryness.
29. "Dry milk products or powdered milk products" means milk or milk products dehydrated by evaporation.
30. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
31. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or

concentrated milk; provided, however, that this term shall not be construed to mean or include:

- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
  - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
  - c. Oleomargarine.
32. "Flavored drink or flavored dairy drink" means a beverage or confection consisting of skim milk to which has been added a syrup or flavor made from wholesome ingredients.
  33. "Flavored milk" means a beverage or confection consisting of milk to which has been added a syrup or flavor made from wholesome ingredients.
  34. "Flavored reconstituted drink or flavored reconstituted dairy drink" means a flavored drink made from reconstituted skim milk.
  35. "Flavored reconstituted milk" means a flavored milk made from reconstituted milk.
  36. "Fortified milk and milk products" means milk to which has been added vitamins or minerals in an approved method.
  37. "Frozen milk" means milk which has been processed by freezing.
  38. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
  39. "Half and half" means a product consisting of a mixture of milk and cream.
  40. "Homogenized milk" means milk which has been treated in such a manner as to ensure breakup of the fat globules to such an extent that, after forty-eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" must be interpreted to include homogenized milk.
  41. "Ice cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry

form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients.

42. "Ice cream and ice milk mix" means and includes any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or frosted malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:
  - a. If the freezing of such substance, mixture, or compound is accompanied by agitation of the ingredients thereof;
  - b. If such substance, mixture, or compound is made in imitation or semblance of ice cream;
  - c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen.
43. "Ice cream mix" means the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer.
44. "Ice cream plant" means a place where ice cream is made for commercial purposes.
45. "Ice milk plant" means a place where ice milk is made for commercial purposes.
46. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
  - a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
  - b. The packaging used resembles the packaging used for milk or for a milk product.
  - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
  - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.

- e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
47. "Instant dry powder or instant dry milk" means milk dehydrated to dryness and which dissolves "instantly" when reconstituted.
48. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy dairy animals.
49. "Milk or cream hauler" means a person, ~~other than a milk producer or a dairy plant employee, who transports milk or milk products to or from a dairy plant or a collecting point business, or~~ corporation that owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
50. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored and prepared for distribution.
51. "Milk producer" means a person who owns or controls one or more dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.
52. "Milk products or dairy products" means and includes cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, low fat skim milk, nonfat milk, flavored milk, flavored drink, flavored reconstituted milk, flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, fortified milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, cottage cheese, creamed cottage cheese, butter, ice cream, ice milk, cheese, unsweetened condensed milk, sweetened condensed milk, evaporated milk, dry buttermilk, dry whole milk, dry skim milk, and any other product made by the addition of any substance to milk or to any of these milk products, and used for similar purposes, and designated as a milk product by the dairy commissioner.
53. "Milk solids or total solids" means the total amount of solids in milk.
54. "Misbranded milk or misbranded milk products" means any milk or milk product which carries a grade label, unless such grade label has been awarded by the dairy commissioner and not revoked, or which fails to conform in any other respect with the statements on the label.
55. "Nonfat, fat-free, or defatted milk" means skim milk which contains not more than fifteen hundredths of one percent milkfat.
56. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.

57. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.
58. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
59. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices or arrangements.
60. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical or chemical properties of the original product.
61. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
62. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
63. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
64. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
65. "Reconstituted or recombined cream" means a product which results from the combination of dry cream, butter, or milkfat, with cream, milk, skim milk, or water, and which complies with the milkfat standards of cream.

- ~~65-~~ 66. "Reconstituted, or recombined, half and half" means a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream.
- ~~66-~~ 67. "Reconstituted or recombined milk" means a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids-not-fat of milk.
- ~~67-~~ 68. "Reconstituted or recombined skim milk" means a product which results from the recombining of skim milk constituents with water.
- ~~68-~~ 69. "Retail" means the sale of milk or milk products directly to the consumer.
70. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~69-~~ 71. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~70-~~ 72. "Skim milk or low fat milk" means milk from which a portion of milkfat has been removed.
- ~~71-~~ 73. "Skim milk powder or dry skim milk" means skim milk dehydrated to dryness.
- ~~72-~~ 74. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~73-~~ 75. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~74-~~ 76. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~75-~~ 77. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~76-~~ 78. "Vitamin D milk" means milk the vitamin D content of which has been increased by an approved method.
- ~~77-~~ 79. "Whipped butter" means butter to which a harmless gas has been added.
- ~~78-~~ 80. "Whipped cream" means cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, a harmless flavoring, or a harmless stabilizer.
- ~~79-~~ 81. "Whole milk powder or dry whole milk" means milk which has been dehydrated to dryness.

~~60-~~ 82. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02.1. Records release required with application for licensure. ~~An applicant for a license~~ A purchaser of milk or cream in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 3. AMENDMENT. Section 4-30-03.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited. Each applicant for a license under section 4-30-02 who purchases milk or cream from a dairy producer, ~~except cream stations,~~ shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant. ~~The applicant shall pay the cost of any statements and audits made by the department.~~

SECTION 4. AMENDMENT. Section 4-30-11 of the North Dakota Century Code is amended and reenacted as follows:

4-30-11. Attorney general to represent dairy department and may employ assistants - Dairy department need not pay court costs. The attorney general shall represent the dairy department in any action or proceeding brought under the provisions of section 4-30-04, and ~~he~~ may employ outside legal assistance when ~~he deems it necessary to do so,~~ and may deduct the expense in connection therewith from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 4-30-04 when such fee, cost, or disbursement accrues to the state or to a county of this state.

SECTION 5. AMENDMENT. Section 4-30-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-12. License needed to sample, grade haul, or test - Training - Examination - Term - Fee. No person shall sample, grade haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the dairy department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of his substitute. An applicant for license shall file an application with the department stating the type of sampling, grading hauling, or testing he the applicant wishes to be licensed for. Before a license is issued, the applicant sampler shall receive training in the sampling or grading of milk or milk products as may be required by the department, and shall pass a written examination prepared and given by the department. He The sampler shall show that he is conversant with knowledge of the requirements of this chapter which pertain to sampling, grading, or testing, and must prove by actual demonstration that he the sampler is competent and qualified to perform each type of sampling, grading, and testing listed on his application. The commissioner shall then issue a license which shall state the types of sampling, grading hauling, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after he has taken any additional training and has satisfactorily passed the required examinations for each addition. Examinations shall be given by the department at times and places as the department shall determine. A licensee need not take any examinations when renewing his license unless his ability at performing sampling, grading, or testing is questioned by the commissioner or his assistants. All testers and samplers are required to attend a training session sponsored by the department every two years. Retraining or retesting or both may be required by the commissioner at any time when the commissioner reasonably determines it to be necessary. Licenses issued under this section shall expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The fee for the annual license is five ten dollars, and a one five dollar penalty fee is applied after the thirty-first day of January if renewals are not paid prior to that date.

SECTION 6. AMENDMENT. Section 4-30-15 of the North Dakota Century Code is amended and reenacted as follows:

4-30-15. Suspension or revocation of license - Judicial review - Emergency order. Any proceedings under this chapter for the suspension or revocation of any license, or to otherwise determine compliance with this chapter and the rules and regulations of the dairy department, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.



Any person, firm, or corporation whose license for any place of business is suspended is not eligible during the period of the suspension to engage in the purchase, sale, processing, manufacturing, sampling, grading, or testing of milk or milk products at the place of business activities allowed by the suspended license either personally, or indirectly by having a financial interest in the business.

SECTION 7. AMENDMENT. Section 4-30-16 of the North Dakota Century Code is amended and reenacted as follows:

4-30-16. Witnesses - Subpoena. The ~~commissioner~~ hearing officer has the power to subpoena witnesses, to compel their attendance, and to administer oaths as provided for in chapter 28-32.

SECTION 8. AMENDMENT. Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, ~~grading~~ hauling, or testing of milk or milk products must conform to that described in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, ~~grading~~ hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, ~~grading~~ hauling, or testing procedures or equipment. The commissioner, where ~~he deems it~~ appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 9. AMENDMENT. Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American ~~Public Health Association, Incorporated~~ public health association, incorporated. Records must be kept which readily identify the sample with ~~the~~ those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, ~~solids-not-fat~~, and the total amount of money paid for the milk. All milk samples must be kept for at least twenty-four hours after testing has been completed.

SECTION 10. AMENDMENT. Section 4-30-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-21. Standards for the production of cream for manufacturing purposes. Cream for manufacturing purposes must be separated from the milk of healthy cows and from herds which are kept in conformance with the laws of North Dakota and the rules of the board of animal health and the state dairy department. Cows must not be fed any hay, silage, or other feed which contains any unwholesome substance. Milk from cows treated with an

antibiotic ~~or~~, other drug, or other inhibitor must be excluded from the market for at least seventy-two hours unless specifically stated otherwise on the label of such antibiotic or drug. The cowyards, premises, and buildings must be kept reasonably clean. Utensils, equipment, and other items used in handling the milk or cream must be kept clean, in good condition, and free of rust. New utensils and equipment must subscribe to 3A standards if such standards have been established for said utensils or equipment. Udders must be washed before milking. The milk and cream must be protected at all times from contamination with flies, rodents, and sediment, and from extremes of temperature.

SECTION 11. AMENDMENT. Subsection 5 of section 4-30-22 of the North Dakota Century Code is amended and reenacted as follows:

5. All regulatory officials and all persons, firms, or corporations authorized to purchase cream shall add a harmless vegetable color to all "unlawful cream" offered for sale. Cream so colored must then be returned to the party offering it for sale. All licensed cream buyers shall keep a record of cream or butterfat purchased as to grade and sediment test. Such record must be available for inspection for ~~six~~ twelve months from the date of purchase.

SECTION 12. AMENDMENT. Section 4-30-26 of the North Dakota Century Code is amended and reenacted as follows:

4-30-26. Purchases of cream - Prices of grades to be kept posted. The prices being offered for butterfat at every cream purchasing establishment must be properly posted. If a different price is being paid at any one cream purchasing establishment owned, operated, or controlled by the same person, firm, or corporation for butterfat shipped directly, than is being offered for butterfat delivered at such point, all direct shipment and delivered prices must be so posted. All prices must be posted in a place ~~where they can be clearly seen from the street~~ available to the general public. A price different from that so posted must not be paid and at no time may a price differential between grades be less than one cent per pound [.45 kilograms] of butterfat.

SECTION 13. AMENDMENT. Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1978~~ 1989 Recommendations of the United States Public Health Service" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The ~~dairy~~ commissioner may adopt as dairy department regulations other standards in addition to any amendments, supplements to, or new editions of said milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade "A" milk and milk products.

SECTION 14. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - ~~1978~~ 1989 Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 15. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the latest edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~1978~~ 1989 Edition".

SECTION 16. AMENDMENT. Section 4-30-37 of the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules and regulations of the dairy department must be kept by each business sampling, or testing, or grading milk or cream for at least ~~six~~ twelve months in a manner approved by the dairy commissioner.

SECTION 17. AMENDMENT. Section 4-30-38.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-38.1. Milk haulers - License required - Commissioner to adopt rules. No ~~natural~~ person shall own or operate any tank truck, bulk milk hauler truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall promulgate rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of the department is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample, grade, or test milk or milk products issued pursuant to section 4-30-12.

SECTION 18. AMENDMENT. Section 4-30-45 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-45. Labeling of milk and milk products for sale at retail. A package, carton, box, or any other container which holds milk or milk products for sale at retail may not bear any statement, design, or device regarding the product, or ingredients and substances contained therein, which is false, deceiving, misleading, or confusing in any particular, or which infers falsely as to the locality, state, or county of its origin. All containers must be so labeled as to clearly show the proper and correct net

weight, volume, quantity, or size of the products contained therein as the case may be and they must be filled as full as practicable. All containers must be labeled so as to clearly show the name of the product, its correct grade, if a grade is stated, and whether or not the product is raw, pasteurized, homogenized, reconstituted, or condensed. A container containing milk or milk products produced from a dairy animal other than a cow must be labeled so as to designate the dairy animal from which the milk or milk product was produced. All containers must be readily identifiable with the dairy plant which last processed, manufactured, or packaged the product either by having the name and location of said plant printed on the container or by registering with the dairy department, a code or mark of identity, which may be a number, name, letter, or any other mark of identity and having this mark plainly painted or stamped on each container. The dairy commissioner shall keep record of all such marks of identity and may not register any mark which is identical to or is so similar to any mark already registered by another person that it would be difficult to differentiate between them. Lettering on all labels on or attached to all such containers must be readily legible and all information required by this section must appear on at least one single panel of all containers. No person, firm, or corporation may use, in connection or association with the sale, exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the word "butter", "creamery", or "dairy", except as otherwise required by the laws of this state, nor use the name or representation of any breed of dairy cattle, any combination of such word or words and representation, or any other words, or symbols, or combination thereof commonly used in the sale of butter.

SECTION 19. AMENDMENT. Section 4-30-47 of the North Dakota Century Code is amended and reenacted as follows:

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk or cream sold or offered for sale at the request of the owner and in his the owner's presence, a sample of such milk or cream obtained as provided in sections 4-30-19 and 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk or cream in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or his the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in his the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk or cream. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

SECTION 20. AMENDMENT. Section 4-30-51 of the North Dakota Century Code is amended and reenacted as follows:

4-30-51. Commissioner to investigate complaint. Upon receiving a written statement claiming that any provisions of this chapter or the rules and regulations of the dairy department have been violated, the ~~dairy~~ commissioner shall investigate ~~said~~ the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that the provisions of this chapter or the rules and regulations of the dairy department have been violated, ~~he shall~~ the commissioner may take any action ~~he deems~~ deemed appropriate.

SECTION 21. REPEAL. Section 4-30-44 of the North Dakota Century Code is repealed.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 71

SENATE BILL NO. 2227  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### PESTICIDE REGULATION

AN ACT to amend and reenact sections 4-35-05, 4-35-12.1, subsection 13 of section 4-35-15, sections 4-35-16, 4-35-20, and subsections 4 and 6 of section 4-35-24 of the North Dakota Century Code, relating to the regulation of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- 2.1. "Applicator" means any person who applies a pesticide to land.
3. "Beneficial insects" means those insects which, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
4. a. "Certified applicator" means any individual who is certified under this chapter as authorized to use any restricted use pesticide covered by the applicator's certification.  
b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.  
c. "Commercial applicator" means a certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses any pesticide which is classified for restricted use for any purpose or on any property other than as provided for by subdivision b.
5. "Dealer" means any person who sells a pesticide to an end user.

- ~~5-~~ 6. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- ~~6-~~ 7. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- ~~7-~~ 8. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- ~~8-~~ 9. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- ~~9-~~ 10. "Environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.
- ~~10-~~ 11. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- ~~11-~~ 12. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~12-~~ 13. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- ~~13-~~ 14. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~14-~~ 15. "Labeling" means the label and all other written, printed, or graphic matter:
- Accompanying the pesticide or device; and
  - To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental

protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

- ~~15-~~ 16. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
- ~~16-~~ 17. "Mixture" means a diluted pesticide combination.
18. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
- ~~17-~~ 19. "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether or not incorporated.
- ~~18-~~ 20. "Pest" means:
- a. Any insect, snail, slug, rodent, nematode, fungus, weed; or
  - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living man or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
- ~~19-~~ 21. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- ~~20-~~ 22. "Pesticide dealer" means any person who distributes restricted use pesticides.
- ~~21-~~ 23. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
- ~~22-~~ 24. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~23-~~ 25. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency,



municipal corporation, public utility, or other governmental agency.

- ~~24-~~ 26. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
27. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~25-~~ 28. "Snails or slugs" include all harmful mollusks.
- ~~26-~~ 29. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~27-~~ 30. "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~28-~~ 31. "Weed" means any plant which grows where not wanted.
- ~~29-~~ 32. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, but not limited to, mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-12.1 of the North Dakota Century Code is amended and reenacted as follows:

4-35-12.1. "Stop-sale" orders. ~~Where an emergency exists requiring immediate action to protect the public health and safety, based on inspection or tests, the commissioner of agriculture may issue and enforce a stop-sale order to the distributor of any pesticide when the commissioner finds that the pesticide is being offered for sale in violation of this chapter, and the order must direct that the pesticide be held at a designated place until released in writing by the commissioner. The owner or custodian of the pesticide may petition a court of competent jurisdiction in the county where the pesticide is found for an order releasing the product for sale in accordance with the findings of the court. Whenever any pesticide or device is found by the commissioner and there is reason to believe on the basis of inspection or tests that the pesticide or device is in violation of any of the provisions of this chapter, or when the registration of the pesticide has been canceled by the state or United States environmental protection agency or has been suspended, the commissioner may issue a written or printed "stop-sale, use, or removal" order to any person who owns, controls, or has custody of the pesticide or device, and after receipt of the order, no person may sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.~~

SECTION 3. AMENDMENT. Subsection 13 of section 4-35-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land.

SECTION 4. AMENDMENT. Section 4-35-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates, ~~except private applicators,~~ to maintain records ~~with respect to applications and sales of restricted use pesticides.~~ of sales of restricted use and special exemption pesticides and all commercial applications of pesticides. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 5. AMENDMENT. Section 4-35-20 of the North Dakota Century Code is amended and reenacted as follows:

4-35-20. Discarding and storing of pesticides ~~and pesticide containers, and pesticide rinsate.~~ No person may discard, store, display, or permit the disposal of surplus pesticides ~~and~~ empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger ~~man and his~~ the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

SECTION 6. AMENDMENT. Subsections 4 and 6 of section 4-35-24 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. For the purpose of carrying out the provisions of this chapter, the commissioner may enter upon any public or private premises at reasonable times, in order to:
  - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which such equipment is stored or used.
  - b. Inspect or sample lands actually or reported to be exposed to pesticides.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or land.
  - e. Sample Draw samples of a reasonable amount of tank mix pesticides and tank mixes being applied or to be applied without compensation to the applicator for values less than three dollars. If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.
  - f. Observe the use and application of a pesticide.

- g. Have access for the purpose of inspecting any premises or other place where pesticides or devices are held for distribution, sale, or for use or for the purpose of inspecting and obtaining samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for such pesticides.
6. ~~Should~~ When access is refused or in situations where the commissioner feels critical enforcement documentation may be lost, the commissioner be denied access to any land or records pertaining to pesticide application and sales where such access was sought or the commissioner's designated agent for the purposes set forth in this chapter, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land or records for said purposes. The court may, upon such application and upon compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 72

SENATE BILL NO. 2025  
(Legislative Council)  
(Interim Agriculture Committee)

### **PESTICIDE CONTAINER DISPOSAL PROGRAM**

AN ACT relating to an agricultural pesticide and pesticide container disposal program; to provide an appropriation; to provide a statement of legislative intent; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural pesticide and pesticide container disposal pilot project - Compensation.

1. The words used in this section are as defined in North Dakota Century Code section 4-35-05.
2. In consultation with an advisory board consisting of the state health officer; the state engineer; the state geologist; the director of the North Dakota state university extension service; the administrative officer of the state soil conservation committee; the attorney general; and two individuals representing agribusiness organizations, one individual representing a farm organization, and one member of the legislative assembly, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall design and implement a project to:
  - a. Collect and either recycle or dispose of unused pesticides and empty, triple-rinsed or pressure-rinsed agricultural pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.
  - b. Demonstrate and promote proper agricultural pesticide container management. The commissioner, in consultation with the director of the North Dakota state university extension service, shall develop informational and educational materials to promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
  - c. Evaluate current pesticide container management methods and the cause and the extent of problems associated with pesticide containers. The commissioner shall conduct surveys and collect information on proper and improper pesticide container rinsing, collection, storage, and disposal.

- d. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.
3. Any entity collecting the pesticide containers shall manage and dispose of the containers in compliance with applicable federal and state requirements. State agencies, when called upon, shall assist the commissioner in implementing the pilot project.
4. For services rendered in connection with the design and implementation of the pilot project, the legislator member of the advisory board is entitled to compensation and expense reimbursement in the amounts provided for in section 54-35-10 and the other members selected by the commissioner of agriculture are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project must occur in areas to be determined by the commissioner of agriculture in consultation with the persons listed in subsection 2 of section 1 of this Act. Before December 1, 1992, the commissioner of agriculture shall determine whether the project implemented under section 1 of this Act should be continued or expanded to a statewide project. If the commissioner determines that the project should be continued or expanded, the commissioner shall recommend appropriate legislation to the fifty-third legislative assembly.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund, not otherwise appropriated, the sum of \$600,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of analyzing and disposing of unused pesticides and triple-rinsed or pressure-rinsed pesticide containers for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the legislative assembly that a greater emphasis and effort be placed on the recycling or disposal of unused pesticides.

SECTION 5. EXPIRATION DATE. This Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 73

SENATE BILL NO. 2458  
 (Senators Dotzenrod, Stenehjem, Marks)  
 (Representatives Dalrymple, Nowatzki)

### ORGANIC FOODS

AN ACT to create and enact two new sections to chapter 4-38 of the North Dakota Century Code, relating to organic foods; to amend and reenact sections 4-38-02 and 4-38-03 of the North Dakota Century Code, relating to organic foods; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-38-02 of the North Dakota Century Code is amended and reenacted as follows:

4-38-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Certifying agent" means a person or persons registered with the North Dakota commissioner of agriculture who have demonstrated to the North Dakota commissioner of agriculture that they have the staff and expertise to carry out the requirements of certification as outlined in this chapter.
2. "Organic food" means any food product, including meat, dairy, or a beverage, that is marketed or sold using the term or a derivative of the term organic food in the labeling or advertising of the product.
- ~~2- 3.~~ "Pesticides" means synthetic herbicides, insecticides, and fungicides, and all other toxic materials. The term does not include material from naturally derived substances.
- ~~3- 4.~~ "Synthetic fertilizer" means all nitrogen sources derived from ammonia; phosphorus derived from the acid treatment of rock phosphates; refined or highly soluble potassium salts, whether manufactured or mined; and all other chemically refined, synthesized, or acid treated material.
- ~~4- 5.~~ "Vendor" means any person who sells organic food to a consumer or another vendor, or who processes, manufactures, or otherwise transforms an organic food on behalf of a seller of organic food.
- ~~5- 6.~~ "Verification" means a system maintained by the vendor of organic foods that demonstrates compliance to standards under which product identity may be traced from farm to consumer, using a series of documents that record information about the vendor's production and processing techniques, including records documenting inspection visits by the vendor or the vendor's designee a certifying agent,

records documenting inventory, and records documenting adherence to standards.

**SECTION 2. AMENDMENT.** Section 4-38-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-38-03. Production standards.** The minimum standards qualifying a product to be labeled as an organic food require that:

1. The product was grown or raised, or is composed of ingredients that were grown or raised, without the use of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, arsenicals, or other synthetic products. However, treated seed may be used if untreated seed is not available.
2. The soil on which an organic food is grown or raised must have been free of synthetic fertilizers, pesticides, hormones, antibiotics, growth stimulants, and arsenicals for a minimum of three years prior to the harvest of the organic food.
3. ~~No synthetic products were used in the storage, processing, or manufacturing process.~~ The producer or handler must be certified by a registered certifying agent.
4. The producer or handler seeking certification under this chapter has submitted an organic plan to the certifying agent. The plan must be reviewed by the certifying agent who shall determine if the plan meets the requirements of the program. All farm plans must include provisions to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring. All handling plans must contain provisions designed to ensure that agricultural products that are sold or labeled as organically produced are purchased and handled in a manner that is consistent with the purposes of this chapter.

**SECTION 3.** A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Violations - Ineligibility - Reporting of violations.

1. Misuse of label. Any person who knowingly sells or labels a product as organic, except in accordance with this chapter, is guilty of a class B misdemeanor. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person including a producer, handler, or vendor must be deemed to be the act, omission, or failure of the employer as well as the person employed. In addition to guilt of a class B misdemeanor, a person who violates this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding.
2. Ineligibility. Any person who:
  - a. Makes a false statement;

- b. Attempts to have a label indicating that an agricultural product is organically produced affixed to the product that the person knows, or should have reason to know, to have been produced or handled in a manner that is not in accordance with this chapter; or
- c. Otherwise violates the purposes of the applicable organic certification program as determined by the commissioner after notice and an opportunity to be heard, is not eligible, for a period of five years from the date of the occurrence, to receive certification under this title with respect to any farm or handling operation in which the person has an interest. The commissioner may reduce or eliminate the period of ineligibility in this subsection if the commissioner determines that reduction or elimination is in the best interests of the applicable organic certification program.
3. Reporting of violations. A certifying agent shall immediately report any violations of this chapter to the commissioner.
4. Violations by certifying agent. A certifying agent who violates a provision of this chapter or who falsely or negligently certifies any farming or handling operation that does not meet the terms and conditions of the applicable organic certification program as an organic operation, as determined by the commissioner, after notice and an opportunity to be heard:
- a. Is subject to revocation of registration as a certifying agent under this chapter; and
- b. Is ineligible to be registered as a certifying agent under this chapter for a period of not less than three years subsequent to the date of revocation.

SECTION 4. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Rules. The commissioner of agriculture may adopt rules to implement this chapter which must at least comply with title XXI of the Food, Agriculture, Conservation, and Trade Act of 1990.

Approved April 5, 1991  
Filed April 8, 1991



## CHAPTER 74

HOUSE BILL NO. 1065  
(A. Olson)

### GINSENG CULTIVATION

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to cultivated ginseng; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 4 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture.
2. "Cultivated ginseng" means ginseng dry root, live root, tissue culture, or seed propagated in this state.
3. "Dealer" means a person who buys cultivated ginseng for the purpose of resale. The term does not include a person who buys cultivated ginseng dry root, solely for the purpose of final retail sale to consumers in the United States.
4. "Ginseng" means *Panax quinquefolius* L.
5. "Grower" means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.
6. "Out-of-state cultivated ginseng" means cultivated ginseng grown or nurtured outside this state.

Growers and dealers - Registration - Fees. A person who desires to act as a grower or a dealer shall register with the commissioner on a form provided by the commissioner. A person who acts as a dealer and a grower shall register as both. Each dealer shall pay a registration fee of twenty-five dollars. Each grower shall pay a registration fee of ten dollars. The fee must be submitted with the registration form. The commissioner shall assign a registration number to each person registered. Each dealer's registration is valid for one year from the date of issuance. Each grower's registration is valid for two years from the date of issuance.

Sale or shipment of cultivated ginseng.

1. Upon request, the commissioner shall provide each registered grower and dealer with shipment certificates and report forms. The commissioner shall stamp each shipment certificate and report form with the registration number of the grower or dealer who requests the form. A shipment certificate and report form is valid only if

used during the registration period for which the stamped registration number of the grower or dealer is issued. The commissioner may charge a fee not exceeding five dollars to recover the costs related to providing shipment certificates and report forms.

2. Except as provided in subsection 6, no person may sell or ship cultivated ginseng to a dealer or ship cultivated ginseng out of this state unless the cultivated ginseng is accompanied by a completed shipment certificate provided by the commissioner. The shipment certificate must specify the year in which the cultivated ginseng was harvested. The person selling or shipping the cultivated ginseng shall submit a report form describing to the commissioner the source of all cultivated ginseng included in the sale or shipment. The report must be within thirty days after the sale or shipment. Each person who completes a shipment certificate or report form must retain a duplicate copy for three years from the date of the sale or shipment.
3. No dealer may purchase or receive cultivated ginseng unless it is accompanied by a completed shipment certificate. A dealer shall retain a copy of each shipment certificate received for a period of three years from the date of receipt.
4. No dealer may purchase or receive out-of-state cultivated ginseng unless it is accompanied by a valid certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate must include the source, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. The dealer must retain a copy of each certificate received for a period of three years from the date of receipt.
5. No person may import out-of-state cultivated ginseng into this state unless the imported shipment is accompanied by a valid certificate issued by the state of origin. No person may ship out-of-state cultivated ginseng using a shipment certificate issued by this state.
6. Subsection 2 does not apply to a person who sells or ships cultivated ginseng dry root to a person outside this state who is buying or receiving the cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record of the sale or shipment which includes the following:
  - a. The name and address of the purchaser or recipient.
  - b. The dry weight of the cultivated ginseng dry root included in the sale or shipment.
  - c. The date of the sale or shipment.
  - d. The source of all of the cultivated ginseng dry root included in the sale or shipment.

- e. The year in which the cultivated ginseng dry root was harvested.

Inspection or submission of records. Each dealer or grower shall make all records, including records that are located outside of this state, required to be kept under this chapter available for inspection or copying by the commissioner upon the commissioner's request.

Certain records not public information. Documents and records relating to transactions in cultivated ginseng dry root submitted to the commissioner pursuant to this chapter by a grower or dealer are not public information.

Enforcement actions. The commissioner may deny, suspend, or revoke the registration of any dealer or grower and may invalidate shipment certificates completed by the dealer or grower, if the commissioner finds that the dealer or grower has violated this chapter. The commissioner may, without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the commissioner finds that there is a need for immediate action to prevent a violation of this chapter. Any action of the commissioner pursuant to this section must be in writing. Any person who receives a notice under this section is entitled to a hearing before the commissioner if requested within ten days after receipt of the notice. Hearings must be conducted within ten days after receipt of a request for the hearing. Enforcement of any action may not be stayed pending the hearing.

#### Penalties.

1. A person who violates this chapter, or rules adopted to implement this chapter, is guilty of an infraction.
2. A person who violates this chapter, or rules adopted to implement this chapter, is subject to a civil penalty not to exceed five hundred dollars. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The commissioner may maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted to implement this chapter.

Approved March 11, 1991  
Filed March 11, 1991

# ALCOHOLIC BEVERAGES

## CHAPTER 75

HOUSE BILL NO. 1420  
(Representatives Whalen, Mahoney)  
(Senators Keller, Maxson)

### ALCOHOLIC BEVERAGE SELLERS

AN ACT to create and enact two new sections to chapter 5-01, a new subsection to section 5-01-01, a new subsection to section 5-02-02, two new subsections to section 5-03-01, and a new section to chapter 5-03 of the North Dakota Century Code, relating to violations of alcoholic beverage laws and alcoholic beverage license applicants; to amend and reenact sections 5-01-11, 5-03-02, 5-03-05, 5-03-06, subsection 3 of section 5-04-01, and section 5-04-14 of the North Dakota Century Code, relating to alcoholic beverage laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 5-01-01 of the North Dakota Century Code is created and enacted as follows:

"Microbrew pub" means a brewer that brews twenty-five or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.

SECTION 2. AMENDMENT. Section 5-01-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-11. Unfair competition - Penalty. ~~No A manufacturer may engage in may not have any financial interest in any wholesale alcoholic beverage business; nor may any. A manufacturer or wholesaler have any financial interest in may not have any financial interest in any retail alcoholic beverage establishment nor and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:~~

1. Extend normal commercial credits to retailers for industry products sold to them. The state treasurer may determine by regulation the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense does not exceed fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair.

4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to two hundred fifty dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. The state treasurer may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor. This section does not apply to a microbrew pub.

SECTION 3. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Microbrew pubs - Licensing - Taxes. A microbrew pub shall obtain a brewer license and a retailer license as required under this title. A microbrew pub may not engage in any wholesaling activities. A microbrew pub is liable for taxes imposed pursuant to section 5-03-07, in addition to any other taxes imposed on brewers and retailers. A microbrew pub is not precluded from retailing beer it purchases from a wholesaler.

SECTION 4. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Penalty. Any person who violates any provision of this title, or any rule adopted to implement this title, is guilty of a class B misdemeanor, unless the penalty is provided for elsewhere.

SECTION 5. A new subsection to section 5-02-02 of the North Dakota Century Code is created and enacted as follows:

The applicant may not have any financial interest in any wholesale alcoholic beverage business.

SECTION 6. Two new subsections to section 5-03-01 of the North Dakota Century Code are created and enacted as follows:

The applicant may not have any financial interest in any retail alcoholic beverage business.

The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

SECTION 7. AMENDMENT. Section 5-03-02 of the North Dakota Century Code is amended and reenacted as follows:

5-03-02. Fees. The fee for an annual wholesale liquor license is one thousand dollars. The fee for an annual wholesale beer license is two hundred dollars. Fees must be reduced twenty-five percent for each full

quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state treasurer. When an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the department, the fees must be reduced twenty-five percent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date indicated on the application. A license may not be issued for any period for a fee less than one-half of the annual license fee.

SECTION 8. AMENDMENT. Section 5-03-05 of the North Dakota Century Code is amended and reenacted as follows:

5-03-05. Treasurer to enact regulations - Appeal. The state treasurer, pursuant to chapter 28-32, shall adopt rules and regulations governing retailers, wholesalers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. Such regulations will have the force of law thirty days after the date of mailing to the persons affected by such regulations. All decisions of the state treasurer are subject to court review.

SECTION 9. AMENDMENT. Section 5-03-06 of the North Dakota Century Code is amended and reenacted as follows:

5-03-06. Examination by treasurer - Penalty for improper returns. The state treasurer may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, microbrew pub, or other person to determine if such ~~wholesaler~~ person has fully complied with all statutes and regulations pertaining to ~~his wholesale~~ the person's business. If any wholesaler or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax five percent per month of the total amount of the tax unpaid from the due date of payment until paid. Any wholesaler or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state treasurer may forgive all or part of any penalty for good cause shown. If any wholesaler or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state treasurer that such manufacturer has failed to file required reports with his office. Any wholesaler or microbrew pub may have his license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

SECTION 10. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Hearing on alleged violations - Denial of license. On licenses that are renewable annually, the state treasurer may not revoke or suspend a license or deny a renewal prior to conducting a hearing in accordance with chapter 28-32.

SECTION 11. AMENDMENT. Subsection 3 of section 5-04-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Brewer" means every licensed brewer or importer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.

SECTION 12. AMENDMENT. Section 5-04-14 of the North Dakota Century Code is amended and reenacted as follows:

5-04-14. Sale of brewer. Except for good cause, as defined by section 5-04-04, the purchase of a brewer as defined in section 5-04-01, where the purchaser continues in business as a brewer, shall obligate the new brewer to all terms and conditions of the agreement in effect on the date of purchase. "Purchase", for the purposes of this chapter, includes, but is not limited to, the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 76

HOUSE BILL NO. 1319  
(Representatives Oban, Gorder)  
(Senators Evanson, Marks)

### ALCOHOL CONSUMPTION BY MINORS

AN ACT to amend and reenact section 5-01-08 of the North Dakota Century Code, relating to prohibiting minors from consuming alcohol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age purchasing, or attempting to purchase alcoholic beverages, consuming alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of health and consolidated laboratories human services for evaluation and appropriate counseling or treatment.

Approved March 25, 1991  
Filed March 26, 1991



## CHAPTER 77

SENATE BILL NO. 2482  
(Senators Maxson, Stenehjem, Lindgren)  
(Representatives Tollefson, Clayburgh, Kretschmar)

### SPECIAL EVENT PERMITS

AN ACT to amend and reenact sections 5-02-01.1, 5-02-05.1, and 5-02-05.2 of the North Dakota Century Code, relating to permits for special events and the definition of restaurant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Special permit authorized - Penalty. The local governing body may by special permit authorize an on sale, off sale, or on or off sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events designated by the permit. A fee for the local special permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than ~~three consecutive fourteen days, and may include Sundays.~~ The local governing body may establish rules as it may deem proper to regulate and restrict the operation of a special permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 5-02-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-05.1. Special Sunday event alcoholic beverage permit - Penalty.

1. Any city or county may issue a special Sunday ~~event~~ alcoholic beverage permit to a private club, lodge, restaurant, motel, or hotel, ~~as defined under city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment under chapter 5-02; or to a publicly owned or operated facility that serves as the headquarters for a state, multistate, or national event of a bona fide organization recognized by the governing body of the city or county in which the event is held.~~ A county may not issue a permit under this section to a private club, lodge, restaurant, motel, or hotel located within the geographical boundaries of a city.
2. The authority for issuing such special permit rests solely with the governing body of the city or county. A special permit may be granted only upon proper application to and approval by the governing body, and must include payment of a fee determined by the governing body. A special permit granted by the city or county ~~is~~ may be effective for more than one Sunday only.

3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, restaurant, motel, hotel, or publicly owned or operated facility which have been specifically reserved for event activities. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. The private club, lodge, restaurant, motel, hotel, or publicly owned or operated facility granted the special permit shall enforce the requirements of this section and the conditions established by the governing body of the city or county under the permit.
4. The special Sunday event alcoholic beverage permit may not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.
- 5- Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.
5. For purposes of this chapter, unless the context otherwise indicates, "restaurant" means a commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which has a city, county, or state restaurant license and has paid the appropriate city food and lodging taxes for a continuous six-month period before the application for the permit, or which derives fifty percent or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

SECTION 3. AMENDMENT. Section 5-02-05.2 of the North Dakota Century Code is amended and reenacted as follows:

5-02-05.2. Local approval of Sunday beer and wine sales by eating establishments - Fee. The local governing body may provide in any on sale liquor or beer license the right of an eating establishment to dispense and sell beer and wine in conjunction with the sale of prepared meals on Sunday between the hours of twelve noon and nine p.m. for consumption only in that part of the eating establishment habitually used for the serving of prepared meals. As used in this section, "eating establishment" means a restaurant or other commercial establishment that is licensed to engage in the sale of alcoholic beverages at retail pursuant to this chapter, and which has a city, county, or state restaurant license and has paid the appropriate city food and lodging taxes for a continuous six-month period before the application for the permit, or which derives fifty percent or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages. Where this provision is made in an on sale license, the governing body may require the licensee to pay an additional annual fee of not more than one hundred fifty dollars.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 78

SENATE BILL NO. 2174  
(Committee on Industry, Business and Labor)  
(At the request of the Attorney General)

### REINSTATEMENT FEES FOR CERTAIN LICENSES

AN ACT to amend and reenact section 5-02-04, subsection 2 of section 43-31-14, sections 53-04-02 and 57-36-02 of the North Dakota Century Code, relating to license reinstatement fees for state beer or liquor licenses, detection of deception examiner licenses, amusement game or device licenses, and tobacco distributor and dealer's licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-04 of the North Dakota Century Code is amended and reenacted as follows:

5-02-04. State license fee. The fee for an annual state beer or liquor license is fifty dollars each, except in cities over five hundred population at the last federal decennial census, the fee is one hundred dollars for each license. The fee for an annual state license will be charged on a calendar-year basis. License fees will be prorated from the first day of the month in which license is issued up to the last day of the month in which such license expires, except that no license fee will be less than twenty-five dollars. A reinstatement fee of one hundred dollars is required in addition to the annual license fee for each license renewal applied for after December thirty-first.

SECTION 2. AMENDMENT. Subsection 2 of section 43-31-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The annual license fee is thirty-five dollars, and is due and payable on or before October first of each year. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after September thirtieth.

\* SECTION 3. AMENDMENT. Section 53-04-02 of the North Dakota Century Code is amended and reenacted as follows:

53-04-02. Annual license required - Fee. A person may not operate, lease, or distribute an amusement game or device without first having obtained an annual license.

Licenses are of two types. An operator's license entitles the licensee to operate, lease, or distribute machines at locations not owned or managed by the licensee. The operator shall affix to each machine an operator's number provided by the attorney general. The operator shall have a business office within the state and a valid sales tax permit. A location license must be secured by an individual for any establishment managed or owned by

\* NOTE: Section 53-04-02 was also amended by section 1 of Senate Bill No. 2381, chapter 544.

that person. A location license entitles the licensee to have not more than ten machines at one location managed or owned by that individual. An individual is not entitled to more than one location license. The location license must be displayed on or near the machines.

The annual fee for an operator's license is seven hundred fifty dollars for not more than one hundred machines, and two thousand dollars for more than one hundred machines. The annual fee for a location license is twenty-five dollars per machine.

A reinstatement fee of one hundred dollars for an operator license renewal and fifty dollars for a location license renewal is required in addition to the annual license fee for each license renewal applied for after June thirtieth.

\* SECTION 4. AMENDMENT. Section 57-36-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. A reinstatement fee of fifty dollars is required in addition to the annual license fee for each license renewal applied for after June thirtieth. The total reinstatement fee may not exceed five hundred dollars for any one licensee in any fiscal year. Stamps or insignia provided for in this chapter may be sold to and affixed only in North Dakota by licensed distributors. Licensed dealers may sell, buy, or have in their possession only cigarettes upon which stamps or insignia were previously affixed. A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Section 57-36-02 was also amended by section 2 of House Bill No. 1208, chapter 665.

## CHAPTER 79

HOUSE BILL NO. 1408  
(Williams, Payne, Carlson)

### ALCOHOL SALES ON ELECTION DAY

AN ACT to amend and reenact section 5-02-05 of the North Dakota Century Code, relating to dispensing alcoholic beverages on an election day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-05. Dispensing prohibited on certain days - Penalty. Except as permitted by sections 5-02-05.1 and 5-02-05.2, any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Good Friday or Thanksgiving Day, or after six p.m. on Christmas Eve, ~~or between the hours of one a.m. and eight p.m. on the day of any statewide special, primary, or general election~~ is guilty of a class A misdemeanor.

Approved April 2, 1991  
Filed April 4, 1991

**CHAPTER 80**

SENATE BILL NO. 2450  
(Senator Langley)  
(Representatives Coats, Whalen)

**ALCOHOLIC BEVERAGE BRAND REGISTRATION**

AN ACT to create and enact a new section to chapter 5-03 of the North Dakota Century Code, to provide for brand registration of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Brand registration - Penalty. Before any brand of alcoholic beverage may be offered for sale in this state, the primary source of supply for the brand must register the brand annually with the state treasurer. Only registered brands may be sold or transported within the state. Only licensed wholesalers may purchase registered brands from the primary source of supply. A brand is defined as having the same characteristics as required by the bureau of alcohol, tobacco and firearms of the United States treasury department for certification of label or bottle approval. A violation of this section is a class B misdemeanor.

The state treasurer may adopt rules and prescribe the necessary forms to administer this section.

Approved April 3, 1991  
Filed April 4, 1991

# BANKS AND BANKING

## CHAPTER 81

HOUSE BILL NO. 1213  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking  
and Financial Institutions)

### BANK REGULATION

AN ACT to amend and reenact subsection 4 of section 6-01-07.1, subsection 8 of section 6-01-17.1, sections 6-03-12, 6-03-28, 6-03-36, and 6-03-63 of the North Dakota Century Code, relating to department of banking and financial institutions' records, application fees, transfer of assets on consolidation or merger of a bank or trust company, bank capital and dividends, and interest on deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-01-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner may, in the commissioner's discretion, furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, or any state bank or credit union supervisors of other states.

SECTION 2. AMENDMENT. Subsection 8 of section 6-01-17.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed one thousand five hundred dollars.

SECTION 3. AMENDMENT. Section 6-03-12 of the North Dakota Century Code is amended and reenacted as follows:

6-03-12. Transfer of assets on consolidation or merger. All of the rights, property, franchises, and interests of the consolidating or merging bank or trust company in and to every species of property, including all choses in action thereto belonging, are deemed to be transferred to and vested in the bank or trust company into which it is consolidated or merged without other instrument of transfer, and the. The consolidated bank or trust company shall hold and enjoy the same and all rights, property, franchises, and interests in the same manner and to the same extent as were held and enjoyed by the bank or trust company so consolidated or merged therewith, including the holding and performing by any bank or trust company of any and all trust and fiduciary relations whatsoever as to and for which

either or any of the banks or trust companies so consolidating or merging may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relationship has come into being or has taken effect at the time of the consolidation or transfer. The merging bank or trust company, however, shall transfer all of its real property to the surviving consolidated bank or trust company by good and sufficient deed of conveyance, and for that and other purposes, it remains a body corporate until dissolved in the manner provided in chapter 6-07, or if no assets or liabilities remain, until the certificate is canceled by the secretary of state.

SECTION 4. AMENDMENT. Section 6-03-28 of the North Dakota Century Code is amended and reenacted as follows:

6-03-28. Shares - Value and transfer - Shareholder's obligation. The capital stock of each association must be divided into shares of not less than ten dollars each, and is deemed personal property and transferable on the books of the association in such manner as may be prescribed by its bylaws or articles of incorporation. A transfer of shares is not valid except between the parties thereto until the transfer is entered upon the books of the association, and is not valid against the association or any creditor thereof while the registered holder of the shares is indebted to the bank as principal debtor, surety, guarantor, or otherwise. No dividend, interest, or profit may be paid on any stock of the bank or bank holding company as long as any past due liability of the shareholder continues, but such dividend, interest, or profit must be retained by the association and applied to the discharge of the past due liability. Every person or corporation becoming a shareholder by any transfer, shall succeed, in proportion to the shares acquired by him, to all rights and liabilities of prior holders of the shares existing by reason of ownership thereof, and no change may be made in the articles of incorporation or bylaws of the association by which the rights, remedies, or security of its existing creditors shall be impaired.

SECTION 5. AMENDMENT. Section 6-03-36 of the North Dakota Century Code is amended and reenacted as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:
  - a. An association's retained net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as of the date used to determine shareholders of record; plus
  - b. The association's retained net profits for the preceding two calendar years as reported in the year end call report; less
  - c. Any required transfers to:



- (1) Surplus;
  - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the remainder of all earnings from the association's current annual operations plus actual recoveries of past losses on loans, investments, and other assets, after deducting from the total, all current operating expenses, actual losses, accrued dividends on preferred stock, if any, accrued interest on capital notes and debentures, unrealized losses from investment in shares of investment companies registered under the investment companies act of 1940, and all federal and state taxes.
4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the state banking board.

SECTION 6. AMENDMENT. Section 6-03-63 of the North Dakota Century Code is amended and reenacted as follows:

6-03-63. Interest on deposits - Rates payable - Penalty. No state banking association may pay interest on deposits, directly or indirectly, at rates greater than authorized by the state banking board. ~~The board may grant permission to pay a rate of interest exceeding four percent on deposits; but the rate so granted shall be uniform within any county.~~ The board's authorization of interest rates is not subject to the public notice and public hearing requirements of chapter 28-32. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a class B misdemeanor.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 82

SENATE BILL NO. 2173  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

### TRUST COMPANY POWERS

AN ACT to amend and reenact sections 6-02-01, 6-03-02.2, 6-05-01, 6-05-03, 6-06-06.1, and 7-02-08.1 of the North Dakota Century Code, relating to a trust company engaging in bank business, issuance of certificates of deposits, and application information and capital requirements for the organization of a trust company; and to repeal section 6-05-08.1 of the North Dakota Century Code, relating to certificates of deposit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-02-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-02-01. Compliance with chapters required - Penalty for noncompliance.

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter.
2. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter this section may not be enforced against it during the life of such charter, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with this section, during the period of noncompliance, shall prominently and continuously display in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter, the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF BANKING AND FINANCIAL

INSTITUTIONS". Such language must be displayed as prominently thereon as is other matter therein.

3. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such way or manner as to lead the public to believe that its business is in whole or in part of the nature of a bank, or that it is under the supervision of the state banking board or the commissioner.
4. Any trust company duly granted a charter to engage in banking business upon compliance with this chapter is subject to the state banking board in its banking operations as is the case for other chartered banks, and all the laws relating to banks in this title are thereafter applicable. Any trust company desiring to take on banking powers shall apply to the state banking board for a hearing upon the application pursuant to section 6-02-06. If the determination of the board is in favor of the applicant, the board shall make its order authorizing the applicant to engage in the business of banking. The order must be recorded in the office of the register of deeds of the county in which the trust company is established, and must be transmitted to the secretary of state who shall record and carefully preserve the order in his office, and shall certify the facts to the state banking board. Thereafter the trust company is subject to the jurisdiction of the state banking board as to its banking operations the same as state banking associations. The provisions of sections 6-02-02, 6-02-03, 6-02-04, 6-02-05, 6-02-07, and 6-02-09 are not applicable to trust companies granted authority to engage in the business of banking by the state banking board.

SECTION 2. AMENDMENT. Section 6-03-02.2 of the North Dakota Century Code is amended and reenacted as follows:

6-03-02.2. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by financial institutions authorized to issue certificates of deposit and chartered to do business in this state under this chapter, or as authorized under sections ~~6-05-00.1~~, 6-06-06.1, and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 3. AMENDMENT. Section 6-05-01 of the North Dakota Century Code is amended and reenacted as follows:

6-05-01. Who may form - Corporation has perpetual existence. Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

At the time and place stated, and through any sources of information at its command, the board diligently shall inquire examine and consider all relevant factors including whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company, whether the proposed institution is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed institution, and any reasons advanced by any person why such institution should not be permitted to be organized. At the termination of such hearing, the board shall make a brief statement in writing of its conclusions, and if it finds that the proposed institution should not be permitted to organize, it shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the secretary of state. A determination in favor of such organization must be joined in by all the members of the board.

Any banking association organized under chapter 6-02 may apply to the state banking board for a hearing as provided for in this section and an order authorizing the applicant to transact business as a trust company. If the determination of the board is in favor of the applicant the board shall make its order authorizing the applicant to engage in the business of a trust company upon its showing full compliance with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association shall not be required to be divided in shares of one hundred dollars each as provided by section 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted authority to engage in the business of a trust company by the state banking board. Thereafter such banking association shall be subject to the jurisdiction of the state banking board as to its trust company operations the same as trust companies organized under chapter 6-05.

Any corporation organized and authorized to transact the business of fidelity insurance and corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the provisions of those sections as they existed on June 30, 1983.

**SECTION 4. AMENDMENT.** Section 6-05-03 of the North Dakota Century Code is amended and reenacted as follows:

6-05-03. Capital stock - Amount - Par value - Paid-in capital required. The amount of capital stock of any such corporation may not be less than one hundred thousand dollars, and the same must be divided into shares of one hundred dollars each. No such corporation is authorized to transact any business or exercise any powers as such until the aforesaid minimum amount of capital stock has been subscribed for, and not less than fifty thousand dollars thereof actually has been paid in, invested, and deposited as provided in this chapter. The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interests. The state banking board shall take into consideration peer group ratios, or

federal standards and guidelines, when determining whether any additional capital is required.

SECTION 5. AMENDMENT. Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-06.1. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except that the requirement for insurance of accounts for the North Dakota central credit union may be waived under section 6-06-40, or as authorized under sections 6-03-02.2, ~~6-05-08.1~~, and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 6. AMENDMENT. Section 7-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

7-02-08.1. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by savings and loan associations authorized to issue certificates of deposit and organized to do business in this state under this chapter or having federal savings and loan insurance of accounts, or as authorized by sections 6-03-02.2, ~~6-05-08.1~~, and 6-06-06.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 7. REPEAL. Section 6-05-08.1 of the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 83

HOUSE BILL NO. 1147

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

**REAL ESTATE LOAN APPRAISALS**

AN ACT to amend and reenact sections 6-03-05 and 6-03-08 of the North Dakota Century Code, relating to appraisals prior to loans on real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the North Dakota Century Code is amended and reenacted as follows:

6-03-05. Loans on real estate - Regulation - Limitation. No association may own or carry among its assets at any one time loans dependent primarily upon real estate security in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of sixty-six and two-thirds percent of the amount of its time and savings nontransaction deposits, whichever is the greater. Before any such loan is made the board of directors shall appoint a committee which shall make actual inspection of the security offered and an appraisal must be conducted by a licensed or certified appraiser if required by federal law or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. No director may act as an appraiser of his own property nor of property offered as security for loans the proceeds of which are to be used for his benefit. No unamortized loan secured by realty may be made for a period exceeding five years in an amount exceeding fifty percent of the appraised value of the real estate offered as security.

Any such loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security unless the amount above this limitation is government guaranteed or insured by a private mortgage loan within a period of not more than thirty years.

SECTION 2. AMENDMENT. Section 6-03-08 of the North Dakota Century Code is amended and reenacted as follows:

6-03-08. Powers as to other real estate. Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:

1. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by a licensed or certified appraiser if required by federal law, or if not so required, by an individual who is independent of the transaction.

Approved March 8, 1991  
Filed March 8, 1991

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**CHAPTER 84**

HOUSE BILL NO. 1254  
(Carlisle)

**BANK LOANS AND ADVANCES**

AN ACT to repeal section 6-03-05.1 of the North Dakota Century Code, relating to additional optional loans and advances by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 6-03-05.1 of the North Dakota Century Code is repealed.

Approved March 8, 1991  
Filed March 8, 1991



## CHAPTER 85

HOUSE BILL NO. 1222

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

### FINANCIAL INSTITUTION MERGER OR CONSOLIDATION

AN ACT to amend and reenact sections 6-03-11, 6-03-13.5, subdivision a of subsection 2 of section 6-06-35, sections 6-06-36, and 6-06.1-05 of the North Dakota Century Code, relating to consolidation or merger of banking institutions, examination fees for national bank conversion or merger into a state-chartered bank, conversion or merger of a federal credit union into a state credit union, and examination fees of a credit union in liquidation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-11 of the North Dakota Century Code is amended and reenacted as follows:

6-03-11. Conversion, consolidation, or merger. Any two or more banking institutions as defined in section 6-01-02 upon making application to the state banking board ~~and upon notice and a hearing as provided by sections 6-02-05 and 6-02-06~~ may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof including a statement of the assets and liabilities of the consolidated banking institution must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 2. AMENDMENT. Section 6-03-13.5 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.5. National bank conversion to state bank. A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the state banking board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A national bank proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 3. AMENDMENT. Subdivision a of subsection 2 of section 6-06-35 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner, (3) filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02, and (4) granting discretionary authority to the department commissioner to conduct an examination prior to the conversion date, if determined necessary by the department. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 4. AMENDMENT. Section 6-06-36 of the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger. Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 5. AMENDMENT. Section 6-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

6-06.1-05. Examinations in voluntary liquidation. When deemed advisable by the commissioner, an examination of the books and records of a credit union may be made prior to, during, or following completion of voluntary liquidation. A fee for each examination must be assessed at the rate currently in effect for examinations of operating credit unions. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 86

SENATE BILL NO. 2060  
(Legislative Council)  
(Interim Jobs Development Commission)

### BANK SEPARATE FACILITIES

AN ACT to amend and reenact sections 6-03-13.1, 6-03-13.3, and 6-03-13.4 of the North Dakota Century Code, relating to separate bank facilities; and to repeal section 6-03-13.2 of the North Dakota Century Code, relating to limitations on drive-in bank facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.1 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.1. Separate drive-in facility facilities authorized. Every ~~Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with sections 6-03-13.1 through 6-03-13.4,~~ maintain and operate separate and apart from its banking house one facility facilities for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. The A separate facility must be within the corporate city limits of the main banking house or within three miles [4.83 kilometers] of such city but may not be within the corporate limits of another city. ~~One additional separate drive-in and walkup facility may be maintained and operated not more than one thousand five hundred feet {457.2 meters} from its main banking house by any bank that does not have a drive-in facility at its main banking house.~~ The services rendered at the a separate facility are limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, and receiving payments payable at the bank.

SECTION 2. AMENDMENT. Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to sections section 6-03-13.1 ~~through 6-03-13.4,~~ or to move a facility previously established to another location, it shall apply to the state banking board or the comptroller of the currency, as the case may be, for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.

2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

SECTION 3. AMENDMENT. Section 6-03-13.4 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.4. Effect of authority. Nothing in sections 6-03-13.1 ~~through 6-03-13.4~~ may be deemed to and 6-03-13.3 authorize the maintenance or operation of a branch bank, but a facility authorized ~~hereunder~~ under those sections may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14. National banking associations located in this state have the same, but no greater right by virtue of sections 6-03-13.1 ~~through 6-03-13.4~~ and 6-03-13.3 as banks organized under the laws of this state.

SECTION 4. REPEAL. Section 6-03-13.2 of the North Dakota Century Code is repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 87

HOUSE BILL NO. 1241

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

### **BANK INSOLVENCY, ACQUISITION, AND RECEIVERSHIP**

AN ACT to amend and reenact sections 6-03-57, 6-05-34, 6-07-03, 6-07-04.2, 6-07-13, and 6-07-38 of the North Dakota Century Code, relating to bank insolvency, acquisition, receiver bonds, and closing of receivership; and to repeal sections 6-07-09, 6-07-21, 6-07-22, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29, 6-07-34, 6-07-35, 6-07-36, 6-07-37, 6-07-39, 6-07-40, 6-07-41, 6-07-42, 6-07-43, and 6-07-45 of the North Dakota Century Code, relating to bank foreclosure, receivers, and closing of receivership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-57 of the North Dakota Century Code is amended and reenacted as follows:

6-03-57. Foreclosure of pledge contracts. Except as otherwise provided in chapter 6-07, no pledge made by an association may be foreclosed except by an action in equity brought in the district court of the county in which the pledgor association is located, except where assets are pledged by a state banking association in order to secure borrowed money or the obligation of the association on rediscounted paper, the rights of the pledgee must be determined by the terms of the agreement of pledge, and if the pledged assets are outside of this state, the foreclosure of the pledge is governed by the laws of the state where the pledge is located, and ~~sections 6-07-21 to 6-07-29, inclusive, of this title do not apply.~~

SECTION 2. AMENDMENT. Section 6-05-34 of the North Dakota Century Code is amended and reenacted as follows:

6-05-34. Other code provisions applicable to corporations doing business under this chapter. The provisions of title 10, as it may be amended from time to time, governing profit corporations, and sections 6-01-06, 6-01-09, 6-03-11, 6-03-12, 6-03-27, 6-03-33, 6-03-34, 6-03-35, 6-03-41, 6-03-42, 6-03-51, 6-03-52, 6-03-53, 6-03-54, 6-03-55, 6-03-56, 6-03-57, 6-03-58, 6-03-61, 6-03-62, 6-03-63, 6-03-64, 6-03-65, 6-03-70, 6-03-72, 6-07-01, 6-07-02, 6-07-04, 6-07-05, 6-07-06, ~~6-07-21, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29,~~ 6-08-03, 6-08-06, 6-08-09, 6-08-14, and 6-08-20 are applicable to and must be observed by all corporations organized under this chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

SECTION 3. AMENDMENT. Section 6-07-03 of the North Dakota Century Code is amended and reenacted as follows:

6-07-03. Banks insolvent, when. A bank is deemed insolvent:

1. When the actual cash market value of its assets is insufficient to pay its liabilities;
2. When it is unable to meet the demands of its creditors in the usual and customary manner;
3. When it fails to make good its reserve as required by law; or
4. When it fails to comply with any lawful order of the state banking board within any time specified therein.

SECTION 4. AMENDMENT. Section 6-07-04.2 of the North Dakota Century Code is amended and reenacted as follows:

6-07-04.2. Acquisition of an institution. The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. ~~In considering potential acquisition, the receiver of an insolvent institution or the board, when acting under the provisions of this section, shall entertain bids from potential purchasers in the following manner:~~

- ~~1- First consideration must be given to bids to purchase any or all of the total assets and liabilities made by any of the following, which intend to operate the acquired institution as a bank:
  - a- An individual or individuals desiring to acquire control of the institution.
  - b- A new bank organized under chapter 6-02.
  - c- A bank holding company the home state of which is North Dakota.~~
- ~~2- Second consideration must be given to banks acquiring any or all of the total assets and liabilities of the institution to operate it as a paying and receiving station, in which case the bids must be considered in the following order:
  - a- Banks qualifying to acquire the institution under section 6-03-14.
  - b- North Dakota banks within a seventy five mile radius of the insolvent or failing institution.
  - c- Banks within the state of North Dakota.~~

~~The receiver of an insolvent institution or board when acting under the provisions of this section, may accept a bid of a lower order bidder under subsection 1 or 2, provided the bid is otherwise acceptable and is for an amount at least ten percent greater than a bid of a higher order. The state banking board may grant approval under this chapter for applications for the organization of a state bank, establishment of a paying and receiving station, or establishment of a drive-in facility. The receiver of an insolvent institution or board when acting under the provisions of this section, may reject any and all bids.~~

The procedure for acquisition to operate as a bank or a paying and receiving station procedures may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held. Notwithstanding section sections 6-03-14 and 6-03-18, a paying and receiving station may be authorized. A paying and receiving station established by acquisition under this section shall not be required to discontinue operation by commencement of business by a banking institution at the same place.

SECTION 5. AMENDMENT. Section 6-07-13 of the North Dakota Century Code is amended and reenacted as follows:

6-07-13. Administrative receiver to furnish bond. Every receiver appointed by the state banking board except the federal deposit insurance corporation, before entering upon the discharge of his duties and before proceeding to liquidate the affairs of any bank, ~~shall~~ may be required by the board to furnish a bond executed by the state bonding fund or by some surety company authorized to do business in this state, running to the state of North Dakota, in a penal sum set by the state banking board, for the faithful discharge of his duties in connection with liquidating the affairs of said bank and the accounting for all moneys coming into his hands. Such bond must be approved as to form by the attorney general and must be filed with the commissioner. The cost of such bond must be paid from the assets of the bank being liquidated, and suit may be maintained on the bond by any person injured by a breach of the conditions thereof.

SECTION 6. AMENDMENT. Section 6-07-38 of the North Dakota Century Code is amended and reenacted as follows:

6-07-38. Closing of receiverships - Sale of assets - Notice. Every receivership must be terminated within five ten years of the date of the appointment of the first receiver for said bank. If ninety days prior to the expiration of said ~~five-year~~ ten-year period any assets remain in the hands of the receiver, he shall cause notice of sale thereof at public auction to be given by publishing notice thereof in a newspaper in the county wherein the bank was located once each week for three successive weeks prior to the date set for sale, and such assets may be sold to the highest bidder. Such sale may be had at any earlier time when ordered by the court having jurisdiction. When the receivership of a closed bank is terminated, all books, records, documents, and other property of such bank, and any dividends unclaimed, must be delivered over by such receiver to the commissioner and his receipt taken therefor by the receiver. Such receipt must be filed in the district court having jurisdiction, and the discharge of the receiver, whether he be an administrative or judicial receiver, must be approved by such court before it becomes final. The commissioner is custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed upon the winding up of the receivership proceedings, and is vested with title to any assets belonging to such bank and not distributed in such receivership, and he has full power and authority to convert such assets into cash. ~~He also~~ The commissioner has authority to execute all deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. ~~Any moneys collected by the commissioner prior to July 7, 1975, after the termination of a receivership must be paid into the general fund of the state.~~ Any moneys collected by the commissioner after July 7, 1975, after the termination of a receivership must be paid to



the commissioner of university and school lands. The commissioner may waive any of the requirements of this section in cases where the federal deposit insurance corporation is the receiver.

SECTION 7. REPEAL. Sections 6-07-09, 6-07-21, 6-07-22, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29, 6-07-34, 6-07-35, 6-07-36, 6-07-37, 6-07-39, 6-07-40, 6-07-41, 6-07-42, 6-07-43, and 6-07-45 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 88

SENATE BILL NO. 2189  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking  
and Financial Institutions)

### CREDIT UNION PROPERTY DIVESTITURE

AN ACT to amend and reenact subsections 10 and 11 of section 6-06-06 of the North Dakota Century Code, relating to the powers of a credit union.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 10 and 11 of section 6-06-06 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. Every state credit union has the power to purchase, hold and convey other real estate as herein provided, and not otherwise:
  - a. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
  - b. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
  - c. Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal performed by an independent qualified appraiser must be obtained for all property recorded at or below the lower of twenty-five thousand dollars or ten percent of the credit union's equity. Except as otherwise provided by chapter 10-06, a state credit union may hold possession of any real estate acquired after the effective date of this Act under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06, real estate acquired before the effective date of this Act may be held for a period not exceeding five years from the effective date of this Act. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

11. Credit unions may engage in any activity in which they could engage if they were federally chartered, subject to rules that the state credit union board shall adopt.

Approved March 14, 1991  
Filed March 15, 1991

# CHAPTER 89

HOUSE BILL NO. 1261  
(Representatives Clayburgh, Larson, Gates)  
(Senator Stenehjem)

## NSF CHECK COLLECTION FEES

AN ACT to amend and reenact subsections 2 and 4 of section 6-08-16 and subsections 2, 3, and 7 of section 6-08-16.2 of the North Dakota Century Code, relating to fees for collection costs on checks or drafts issued without sufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 6-08-16 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 2. The person is also liable for collection fees or costs, not in excess of ~~ten~~ fifteen dollars, which are recoverable by civil action by the holder of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder of the check, draft, or order. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
- 4. A notice of dishonor may be mailed by the holder of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date -----  
 Name of Issuer -----  
 Street Address -----  
 City and State -----  
 You are according to law hereby notified that a  
 check dated -----, 19----, drawn on the  
 ----- Bank of ----- in  
 the amount of ----- has been returned  
 unpaid with the notation the payment has been  
 refused because of nonsufficient funds. Within  
 ten days from the receipt of this notice, you must  
 pay or tender to -----  
 (Holder)  
 sufficient moneys to pay such instrument in full  
 and any collection fees or costs not in excess

of ~~ten~~ fifteen dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

SECTION 2. AMENDMENT. Subsections 2, 3, and 7 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

2. A person who, for ~~himself~~ that person or as agent or representative of another, issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
  - a. At the time of issuing the instrument with intent to defraud, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
  - b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~ten~~ fifteen dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for ~~himself~~ that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
  - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
  - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~ten~~ fifteen dollars, which are recoverable by civil action by the holder of the instrument.

7. A notice of dishonor may be mailed by the holder of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored ~~Check~~ Instrument

Date -----  
 Name of Issuer -----  
 Street Address -----  
 City and State -----  
 You are according to law hereby notified that a  
~~check~~ an instrument dated -----, 19---, drawn on the  
 ----- Bank of ----- in  
 the amount of ----- has been returned  
 unpaid with the notation the payment has been  
 refused because (of nonsufficient funds) (the  
 drawer does not have an account). Within ten days  
 from the receipt of this notice, you must pay or  
 tender to -----  
 (Holder)  
 sufficient moneys to pay such instrument in full  
 and any collection fees or costs not in excess of  
~~ten~~ fifteen dollars.

The notice may also contain a recital of the penal provisions of  
 this section and the possibility of a civil action to recover any  
 collection fees or costs authorized by this section.

Approved April 8, 1991  
 Filed April 8, 1991

## CHAPTER 90

HOUSE BILL NO. 1596  
(Representatives Scherber, Belter)  
(Senator Graba)

### ESCROW ACCOUNT INTEREST

AN ACT to create and enact a new section to title 6, a new section to title 7, and a new section to title 47 of the North Dakota Century Code, allowing banking institutions, credit unions, savings and loan associations, and other persons to pay interest on escrow accounts related to mortgages on residences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 6 of the North Dakota Century Code is created and enacted as follows:

Interest on banking institution and credit union escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, each banking institution and credit union intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether the institution or credit union offers interest on the escrow account funds. Each banking institution and credit union that maintains an escrow account shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the escrow account and the method used in computing the interest, if interest is offered.

SECTION 2. A new section to title 7 of the North Dakota Century Code is created and enacted as follows:

Interest on savings and loan association escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, every savings and loan association intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether the association offers interest on the escrow account funds. Each savings and loan association that maintains an escrow account shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the escrow account and the method used in computing the interest, if interest is offered.

SECTION 3. A new section to title 47 of the North Dakota Century Code is created and enacted as follows:

Interest on other escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, every residential mortgagee, including any insurance company whose articles of incorporation are filed under section 26.1-01-03 or who is required to obtain

a certificate of authority under section 26.1-01-05, intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether it offers interest on the escrow account funds. The mortgagee shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the account and the method used in computing the interest, if interest is offered.

Approved April 10, 1991  
Filed April 10, 1991



## CHAPTER 91

SENATE BILL NO. 2059  
(Legislative Council)  
(Interim Jobs Development Commission)

### INTERSTATE BANKING

AN ACT to authorize reciprocal interstate banking; and to create and enact a new section to chapter 57-35 and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to taxation of banks engaged in interstate banking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Bank" means a bank, as that term is defined in section 6-01-02, which:
  - a. Has federal deposit insurance corporation insurance of deposits;
  - b. Accepts deposits that the depositor has a legal right to withdraw on demand; and
  - c. Engages in the business of making commercial loans.
2. "Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended [ch. 240, 70 Stat. 133; 12 U.S.C. 1841].
3. "Board" means the state banking board.
4. "Commissioner" means the commissioner of banking and financial institutions.
5. "Control" means, with respect to a bank or bank holding company:
  - a. Ownership, control, or power to vote, directly or indirectly, or acting through one or more other persons, twenty-five percent or more of any class of voting securities;
  - b. Control in any manner over the election of a majority of the directors; or
  - c. Power to exercise, directly or indirectly, a controlling influence over management and policies.
6. "Equity capital" means the sum of common stock, preferred stock, and surplus and undivided profits.

7. "Located in this state" means:
  - a. A bank of which the organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or
  - b. A bank holding company, with banking subsidiaries, the majority of deposits of which are in this state.
8. "Reciprocating state" is a state that authorizes the acquisition, directly or indirectly, or control of banks in that state by a bank or bank holding company located in this state under conditions similar to those imposed by the laws of this state as determined by the board.
9. "Reciprocating state bank holding company" means a bank holding company that conducts its operations principally in a reciprocating state, the reciprocating state is the state in which the operations of the company's banking subsidiaries are the largest in terms of total deposits, and the company is not owned or controlled by a company having its principal place of business in other than a reciprocating state.

**SECTION 2. Application to acquire a bank or bank holding company.**

1. A reciprocating state bank holding company may, through a purchase of stock or assets of a bank or bank holding company or through a merger with a bank holding company, acquire an interest in an existing bank or banks located in this state if the company meets the conditions and requirements of this Act and, if the interest acquired will result in the reciprocating state bank holding company obtaining control of the bank or banks, the company files an application with the board on forms prescribed by the board.
2. An application under subsection 1 must contain the following information:
  - a. The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including any material business activities and affiliations during the past five years, a description of any material pending legal or administrative proceedings in which the person is a party, and any criminal indictment or conviction of that person by a state or federal court.
  - b. A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the fiscal years, all prepared in accordance with generally accepted accounting principles consistently applied, and a current statement of the assets and liabilities for each person, together with related statements of income, sources, and application of funds as of a date not more than ninety days prior to the date of the filing of the application.

- c. The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.
  - d. The identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons.
  - e. Any plans or proposals that an acquiring party making the acquisition may have to liquidate the bank, sell its assets or merge it, or make any other major change in its business or corporate structure or management.
  - f. The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation.
  - g. Copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition.
  - h. A statement of how the acquisition will bring net new funds into this state. The description of net new funds must be filed with the application and annually thereafter stating the amount of capital funds, including the increase in equity capital, which will result from the acquisition of a bank. The level of total equity capital must exceed three million dollars for a new chartered bank and one million dollars for an acquired bank. The description must state the net increase in loanable funds expressed as an increase in the total loan to total asset ratio of loans and assets in this state. The statement must also include a discussion of initial capital structure, loan policy, investment policy, dividend policy, and the general plan of business, including the full range of consumer and business services that will be offered.
  - i. A statement of how the acquisition of the bank located in the state by a reciprocating state bank holding company will provide a level of developmental loans as required by the board by rule. The reciprocating state bank holding company shall establish and maintain a percentage of developmental loans to total loans at a level no less than the percentage of developmental loans to total loans of the bank company's consolidated statement with all of its bank subsidiaries.
  - j. Additional information required by the board by rule or by specific request.
3. The board shall act on the application within thirty days after the end of the public comment period provided in section 10 of this Act. The board may extend the thirty-day period an additional

thirty days if the board determines that any material information submitted is substantially inaccurate or the applicant has not furnished all the information required. All applications must be accompanied by an application fee of five thousand dollars payable to the state treasurer and deposited into the financial institutions' regulatory fund. Compliance with sections 2 through 5 of this Act satisfies the requirements of section 6-08-08.1. The state banking board may alter the procedures under this Act in the case of an insolvent institution acquisition by merger, consolidation, or purchase of assets and assumption of liabilities. No notice of application need be given and no public hearing need be held in the case of an acquisition of an insolvent institution.

**SECTION 3. Disapproval - Grounds.** The board shall disapprove any proposed acquisition if the board determines that:

1. The financial condition of any acquiring person may jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
2. The competence, experience, and integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;
3. The acquisition will result in undue concentration of resources or substantial lessening of competition in this state;
4. The acquisition will result, at the time of such acquisition, in the reciprocating state bank holding company controlling more than nineteen percent of the aggregate of all deposits located in this state in all state and national banks, including savings and loan associations and savings banks, based upon the public reports most recently filed with the appropriate regulatory agency, and the commissioner may request, quarterly or annually, the amount of deposits held by state and federal savings and loan associations and savings banks in North Dakota offices or banks;
5. The application fails to demonstrate adequately that the acquisition would bring net new funds into this state; or
6. The application is incomplete or any acquiring party neglects, fails, or refuses to furnish the information required by the board.

**SECTION 4. New bank application.** Any application to organize a bank under title 6 may include control by a reciprocating state bank holding company if, in addition to the conditions in chapter 6-02 and the application does not present any facts that would be grounds for disapproval in section 3 of this Act.

**SECTION 5. Applicant capital requirement.** A reciprocating state bank holding company may not acquire a bank or bank holding company located in this state if immediately before and after the acquisition the reciprocating state bank holding company has in the aggregate a ratio of total capital to total assets of less than six percent, as measured and applied in accordance

with regulations of the board of governors of the federal reserve system in effect on the date of the filing of an application under this Act.

SECTION 6. Notice of disapproval - Hearing.

1. Within three days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.
2. Within ten days after receipt of notice of disapproval, the applicant may request a hearing on the proposed acquisition. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record made at the hearing.
3. The bank holding company that is the subject of the order may seek judicial review at any time within ninety days after the date of an order lawfully issued under this Act.

SECTION 7. Divestiture - Cease and desist.

1. If a reciprocating state bank holding company makes an acquisition other than in full compliance with the requirements and procedures of this Act, the board may, by order:
  - a. Immediately require the reciprocating state bank holding company to divest itself of its direct or indirect ownership or control of any bank located in this state; or
  - b. Require the reciprocating state bank holding company to cease and desist the violations by a certain date.
2. The order is subject to the procedures applicable to cease and desist proceedings under section 6-01-04.2 and any applicable rules.

SECTION 8. Supervision - Examinations. The commissioner may enter into cooperative and reciprocal agreements with federal or other state bank regulatory authorities for exchange or acceptance of reports of examination and other records from the authorities in lieu of conducting examinations of acquiring reciprocating state bank holding companies. The commissioner may enter into joint actions with federal or other state bank regulatory authorities to carry out responsibilities under this Act and assure compliance with the laws of this state.

SECTION 9. Reports. A reciprocating state bank holding company that directly or indirectly, through any subsidiary, acquires a bank pursuant to this Act shall file with the board copies of all regular and periodic reports that the bank holding company is required to file under section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended [ch. 404; 48 Stat. 881; 15 U.S.C. 78m and 78o(d)], but excluding any portions not available to the public, and such other reports as the board may require by rule.

SECTION 10. Public information and participation - Notice.

1. The board shall make available to the public at reasonable cost copies of all applications, including supporting documents and any other information required to be submitted to the board.
2. Upon the filing of an application:
  - a. An applicant shall publish in a newspaper of general circulation, to be designated by the board, notice of the proposed acquisition as prescribed by the board by rule.
  - b. The commissioner shall prepare and update with each new application a bulletin listing all pending applications. The bulletin must be published and mailed without charge to any person upon request.
  - c. The board shall accept public comment on an application for a period of not less than thirty days from the date of the final publication required by subdivision a or thirty days after the date the bulletin listing the application as required by subdivision b is available, whichever is later.

SECTION 11. Exception. If the board of directors of a bank or bank holding company located in this state adopts a resolution to except the bank or bank holding company from being acquired under this Act and files a certified copy of the resolution with the state banking board in person or by certified mail, the bank or bank holding company may not be acquired under this Act. The board of directors may revoke the resolution by filing a certified copy of the revocation with the state banking board in person or by certified mail.

#### SECTION 12. Reporting of loans.

1. Each financial institution and credit union located in this state shall report to the state banking board on August 31, 1991, and on August thirty-first of each year thereafter, the total dollar amount of loans outstanding as of the previous June thirtieth and the aggregate dollar amount of loans outstanding in each of the following three geographical areas: this state; other states, the District of Columbia, the Commonwealth of Puerto Rico, and territories and insular possessions subject to the jurisdiction of the United States; and outside the United States.
2. As used in this section, "loans" excludes federal funds and outstandings on bank credit or debit cards.
3. For purposes of this section, a loan is outstanding in a geographical area if the address of the borrower is in that area. A loan is outstanding in this state if the address of at least one of the borrowers or a substantial portion of the collateral is located in this state.
4. A bank located in this state which is controlled by a bank holding company is not required to file such a report if the holding company files one report in the aggregate for all banks located in this state which are controlled by such bank holding company.

SECTION 13. Interstate banking authorization. This Act authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1842], reciprocal interstate banking in this state. Except as authorized under title 6, this Act does not authorize the establishment in this state of branch offices of a banking subsidiary of any out-of-state bank holding company making an acquisition under this Act.

SECTION 14. Provisions not severable. Notwithstanding section 1-02-20, if any provision of this Act is determined by any court of competent or final jurisdiction to be invalid or unconstitutional, this entire Act is void from the effective date of the final determination.

SECTION 15. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax after reciprocal interstate banking. If the provisions of this chapter do not fairly represent the extent of the bank's business activity in this state and the bank is subject to sections 1 through 13 of this Act, the tax commissioner may require, with respect to all or any part of the bank's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the bank's income.

SECTION 16. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Payment of tax after reciprocal interstate banking. If the provisions of this chapter do not fairly represent the extent of the bank's business activity in this state and the bank is subject to sections 1 through 13 of this Act, the tax commissioner, may require, with respect to all or any part of the bank's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the bank's income.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 92

HOUSE BILL NO. 1327  
(Representatives Wald, Oban, Martinson)  
(Senators Lips, Satrom, Heinrich)

### MUNICIPAL BOND BANK SECURITIES

AN ACT to amend and reenact section 6-09.4-06 of the North Dakota Century Code, relating to lending and borrowing powers of the municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank is authorized to lend money to political subdivisions through the purchase and holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase by the bond bank under this chapter. ~~The bond bank is authorized to lend money to political subdivisions through the purchase and holding of municipal securities and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions, through the purchase and holding of securities issued by the political subdivisions without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase and hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter, is authorized to issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions as provided in this chapter.~~

Bonds of the bond bank issued under this chapter are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.



All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 93

SENATE BILL NO. 2215  
 (Committee on Agriculture)  
 (At the request of the Commissioner of Agriculture)

### AGRICULTURAL MEDIATION

AN ACT to amend and reenact sections 6-09.10-01, 6-09.10-03, 6-09.10-04, 6-09.10-04.1, and 6-09.10-10 of the North Dakota Century Code, relating to agricultural mediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the credit review board, or its authorized agent where applicable.
- ~~2.~~ ~~"Farm" means a tract or tracts of land as provided in paragraph 1 of subdivision b of subsection 15 of section 57-02-08.~~
- ~~3.~~ 2. "Farmer" means a person who is or was involved in the production of an agricultural commodity ~~as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08~~ or livestock.
- ~~4.~~ 3. "Fund" means the home-quarter purchase fund.
- ~~5.~~ 4. "Home-quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.
5. "Person" means an individual, corporation, partnership, or other legal entity.

\* SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff,

\* NOTE: Section 6-09.10-03 was also amended by section 7 of Senate Bill No. 2058, chapter 95.

negotiators, and mediators who may mediate between a farmer disputes involving farmers and the farmer's creditors others, either of whom may request assistance. The board may charge the farmer and each of the farmer's creditors others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1991~~ 1993. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 3. AMENDMENT. Section 6-09.10-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04. Request for assistance - Negotiation - Mediation. Any farmer or, creditor, or other person dealing with a farmer may request the assistance from the administrator. Upon receipt of the request, and upon consent of the farmer and the creditor other person to mediation, the negotiator or mediator shall encourage and assist the farmer and the farmer's creditors other person to reach a voluntary settlement.

SECTION 4. AMENDMENT. Section 6-09.10-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04.1. Liability. The board, commissioner, administrator, staff, negotiators, and mediators are not subject to any liability arising from any actions undertaken on behalf of a farmer or between regarding a farmer and the farmer's creditors, creditor, or other person in attempting to reach a settlement.

SECTION 5. AMENDMENT. Section 6-09.10-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception. Information created, collected, and maintained by the agricultural mediation service regarding the finances of specific farmers and creditors in the course of any mediation is confidential and is not subject to the open records requirements of section 44-04-18. Such information may be released only upon written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings, or and meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers and, creditors, and others are discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

Approved April 5, 1991  
Filed April 8, 1991

# CONTRACTS AND OBLIGATIONS

## CHAPTER 94

SENATE BILL NO. 2081  
(Yockim)

### STATUTE OF FRAUDS FOR DEBTS

AN ACT to create and enact a new subsection to section 9-06-04 of the North Dakota Century Code, relating to contracts that must be written to be valid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 9-06-04 of the North Dakota Century Code is created and enacted as follows:

An agreement or promise to alter the terms of repayment or forgiveness of a debt that is in an aggregate amount of twenty-five thousand dollars or greater.

Approved March 11, 1991  
Filed March 11, 1991

# CORPORATIONS

## CHAPTER 95

SENATE BILL NO. 2058  
(Legislative Council)  
(Interim Jobs Development Commission)

### GROWING NORTH DAKOTA

AN ACT to create and enact section 4-14.1-03.1, chapters 6-09.13, 6-09.14, sections 10-30.3-10, 10-30.3-11, 10-30.3-12, and chapters 10-30.4 and 54-34.3 of the North Dakota Century Code, relating to the agricultural utilization commission, farm loan programs, business loan programs, the creation of the primary sector development fund and the regional rural development revolving loan fund, the creation of the science and technology corporation, and the establishment of a department of economic development and finance; to amend and reenact sections 4-14.1-01, 4-14.1-02, 4-14.1-03, subsection 1 of section 6-09-15, sections 6-09-15.5, 6-09.10-03, 10-24-40, subsection 6 of section 10-30-04, sections 10-30.2-02, 10-30.2-05, 10-30.3-01, 10-30.3-02, 10-30.3-03, 10-30.3-05, 10-30.3-07, 15-12-25, 21-11-02, 21-11-03, 21-11-04, 21-11-05, 21-11-06, 24-02-37.1, 24-03-21, subsection 6 of section 26.1-05-19, subsection 1 of section 28-32-01, sections 52-01-03, 54-34-06.1, 54-34-12, 54-34-15, 54-36-01, 54-40.1-01, subsection 7 of section 54-40.1-02, sections 54-40.1-04, 54-40.1-05, 54-53-02, 55-06-01, and 55-08-02.1 of the North Dakota Century Code and section 8 of House Bill No. 1046, as approved by the fifty-second legislative assembly, relating to the duties of the agricultural utilization commission, the duties of the agricultural mediation service, creation of the economic development finance corporation, the operation of the Bank of North Dakota, references to the economic development commission, the duties of regional councils, and the appropriation to the regional rural development revolving loan fund; to repeal sections 54-34-01, 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-05.1, 54-34-06, and 54-34-08 of the North Dakota Century Code, section 1 of chapter 112 of the 1989 Session Laws and sections 1, 2, and 3 of House Bill No. 1046, as approved by the fifty-second legislative assembly, relating to the economic development commission, the transfer of the Bank of North Dakota's profits into the beginning farmer revolving loan fund, and the rural development revolving loan fund; to require collocation of economic development entities; to provide for a transition; to provide for a transfer of the earnings of the Bank of North Dakota; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-01. Legislative policy and purpose. It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by improving the agricultural

economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural products and stimulate and foster agricultural diversification and encourage processing innovations.

\* SECTION 2. AMENDMENT. Section 4-14.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-02. Agricultural fuel tax fund - Purposes - Other funds. There is hereby created in the state treasury, a fund, to be known as the agricultural fuel tax fund, which must be used to fund programs for the enhancement of agricultural research, development, processing, and marketing. The fund must be used for the following purposes:

1. Appropriation to the North Dakota agricultural products utilization commission for its necessary administrative expenses including expenses of members of the commission, employment of needed personnel, hiring of consultants, contracting with public or private entities for services, and other expenditures necessary to implement the purposes of this chapter.
2. Seventy-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for basic and applied research efforts regarding uses and processing for agricultural products and byproducts in consultation with the president of North Dakota state university and with the prior approval of the commission on each research proposal.
3. Twenty-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for utilization and marketing efforts in consultation with the commissioner of agriculture and with the prior approval of the commission on each marketing proposal.
4. ~~The North Dakota agricultural products utilization commission may apply for, accept, and expend any grants, gifts, or services made available from public or private sources consistent with the purposes of this chapter.~~
- 5- Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in ~~subdivisions~~ subsections 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.

SECTION 3. AMENDMENT. Section 4-14.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agricultural fuel tax fund must be administered by the

\* NOTE: Section 4-14.1-02 was also amended by section 1 of Senate Bill No. 2068, chapter 54.

agricultural products utilization commission which is hereby established. The commission consists of nine members, six of whom must be appointed by the governor for terms of two years each, arranged so that at least three terms expire every year. Four members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July of odd-numbered years. The director of the department of economic development ~~commission~~ and finance, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 4. Section 4-14.1-03.1 of the North Dakota Century Code is created and enacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority - Duties.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter.
2. The commission shall administer a cooperative marketing grant program designed to encourage groups of agricultural producers to develop innovative marketing strategies. The commission shall adopt rules to implement this grant program.
3. The commission shall administer a farm diversification grant program designed to stimulate and foster diversification and innovation and to encourage value-added processing. The commission shall adopt rules to implement this grant program.

\* SECTION 5. AMENDMENT. Subsection 1 of section 6-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Make, purchase, or hold loans:
  - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
  - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
  - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed ~~sixty five~~ seventy percent of the value of the security.
  - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
  - e. That are eligible to be guaranteed under chapter 15-62.1.

\* NOTE: Section 6-09-15 was also amended by section 1 of Senate Bill No. 2054, chapter 640.

- f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
- g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501 (c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the state parks and recreation department.
- h. Under Public Law No. 99-198 [99 Stat. 1534, 7 U.S.C. 1932 et seq.] to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, to finance businesses and community development projects in rural areas.
- j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
- k. To instrumentalities of this state.
- l. As otherwise provided by this chapter or other statutes.

SECTION 6. AMENDMENT. Section 6-09-15.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to North Dakota beginning farmers for the purchase of agricultural real estate. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are hereby appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of North Dakota under subdivision c of subsection 1 of section 6-09-15 and in accordance with the provisions of this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with the provisions of this section.
3. A loan made from the fund may not exceed ~~sixty-five~~ seventy percent of the appraised value of the agricultural real estate to be acquired with the loan proceeds, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and



may establish additional terms and conditions as deemed necessary to make a loan under this section. The Bank ~~may~~ shall take a ~~second~~ first mortgage as security for a loan from the fund ~~if a beginning farmer's real estate financing involves a loan from a source other than the state and may take additional security.~~

4. A loan made from the fund must bear interest at a maximum rate of ~~four~~ six percent per year on the first five years of the loan and ~~eight percent per year the next five years.~~ For the remaining period of the loan, interest must be charged and may float at the Bank's base rate as in effect from time to time.
5. The maximum term of a loan is ~~ten~~ twenty-five years.
6. The industrial commission is responsible for contracting with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.
7. The Bank shall adopt policies to implement this section.

\* SECTION 7. AMENDMENT. Section 6-09.10-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate between a farmer and the farmer's creditors, either of whom may request assistance. The board may charge the farmer and each of the farmer's creditors a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1991~~ 1993. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 8. Chapter 6-09.13 of the North Dakota Century Code is created and enacted as follows:

6-09.13-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agriculture partnership in assisting community expansion fund" means a fund established to buydown the interest rate on loans to on-farm businesses under this chapter.

\* NOTE: Section 6-09.10-03 was also amended by section 2 of Senate Bill No. 2215, chapter 93.

2. "Family farm" means agricultural real estate operated and owned or leased by a farmer, or other organization authorized to own or lease land used for farming or ranching under chapter 10-06.
3. "Farm business" means any business conducted by the farmer or farmer's family, which is integrated into the farm operation and is intended to supplement farm income to allow the farmer to continue farming. It may include nontraditional agricultural, manufacturing, processing, value-added processing, targeted service industries, or other activities calculated to produce income.
4. "Farmer" means a resident of North Dakota whose principal occupation is the production of an agricultural commodity or livestock on a family farm.

6-09.13-02. Loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.13-03. Interest charged by the lenders must be set by the financial institution and matched by the Bank of North Dakota. The rate may be fixed or variable.
2. The amount of a participation interest purchased by the Bank under this section must be not less than fifty percent nor more than eighty percent of the loan amount.

6-09.13-03. Loans to farmers - Purposes - Eligible uses. The loan moneys received by a farmer under this chapter must be used for a farm business. Eligible uses are:

1. Purchase of real property and equipment.
2. Expansions.
3. Working capital.
4. Purchase of inventory.

The moneys cannot be used to refinance any existing debt.

6-09.13-04. Agriculture partnership in assisting community expansion fund established - Continuing appropriation. The agriculture partnership in assisting community expansion fund is hereby established and is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of section 6-09.13-05. After December 31, 1992, moneys may be transferred between this fund and the partnership in assisting community expansion fund established in section 6-09.14-02. This fund is not subject to section 54-44.1-11.

6-09.13-05. Interest rate buydown. The Bank of North Dakota may use moneys in the agriculture partnership in assisting community expansion fund to reduce the interest rate on loans made under this chapter.

SECTION 9. Chapter 6-09.14 of the North Dakota Century Code is created and enacted as follows:

6-09.14-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Business" means a corporation, partnership, individual, or association involved in manufacturing, processing, value-added processing, and targeted service industries as defined by the Bank of North Dakota.
2. "Community" means the city or county in which an eligible business is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area.
3. "Partnership in assisting community expansion fund" or "fund" means a fund established to buydown the interest rate on loans to businesses under this chapter.

6-09.14-02. Fund - Continuing appropriation - Administration. A partnership in assisting community expansion fund is hereby established from a transfer of earnings from the Bank of North Dakota. This is a revolving fund, and all moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11. The Bank of North Dakota shall administer the fund.

6-09.14-03. Fund - Purpose - Interest rate buydown. Moneys in the partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

6-09.14-04. Fund moneys - Eligible uses.

1. The fund moneys may be used to participate in an interest rate buydown on a loan to a new or expanding business for the following eligible uses:
  - a. Purchase of real property and equipment.
  - b. Expansion of facilities.
  - c. Working capital.
  - d. Inventory.

The loan funds cannot be used to refinance any existing debt or for the relocation of the business within North Dakota.

2. The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a

local development corporation, contributions, community funds, future dedicated tax programs, or any other community source.

3. The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.
4. The maximum amount from the fund in the interest rate buydown may not exceed three hundred thousand dollars per loan. The fund participation must be limited to the amount required to buydown the interest to five hundred basis points below the national prime interest rate.
5. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 10. AMENDMENT. Section 10-24-40 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-40. Certification of nonprofit development corporations. The secretary of state, after consultation with the director of the department of economic development commission and finance, shall adopt rules establishing minimum requirements for certification of nonprofit development corporations. The rules must contain a requirement that at least a majority of funds of the corporation must be used for investment in primary sector business. A nonprofit development corporation may obtain certification from the secretary of state upon compliance with this section, the rules adopted by the secretary of state, and payment of a fee of ten dollars.

SECTION 11. AMENDMENT. Subsection 6 of section 10-30-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Cooperate with and avail itself of the facilities of the department of economic development commission and finance and any other similar governmental agencies; to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which ~~shall be~~ are the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

SECTION 12. AMENDMENT. Section 10-30.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-02. Public corporation established - Corporate purpose. A committee comprised of three representatives of the business sector appointed by the industrial commission and three members of the economic development commission shall establish under the Business Corporation Act a public corporation known as the "Myron G. Nelson Fund, Incorporated" and file articles of incorporation for the corporation with the secretary of state. The committee shall also adopt the initial bylaws of the corporation is established. The purpose of the corporation is to organize and manage an investment fund capitalized through the sale of shares of the corporation to the Bank of North Dakota and other public and private investors to provide a source of investment capital for the establishment, expansion, and rehabilitation of North Dakota businesses.

SECTION 13. AMENDMENT. Section 10-30.2-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.2-05. Board of directors. A board of directors, elected by the shareholders pursuant to initial bylaws adopted by the incorporators pursuant to section 10-30.2-02, shall direct the business and affairs of the corporation. There must be representation on the board of directors from ~~the economic development commission~~, investors, and the business sectors of the North Dakota economy. The business sector and investors must constitute a majority of the board.

SECTION 14. AMENDMENT. Section 10-30.3-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-01. Definitions. As used in this chapter unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the North Dakota economic development finance corporation established under this chapter.
3. "North Dakota American Indian" means an enrolled member of a federally recognized North Dakota tribe with at least one-fourth degree blood quantum.
4. "North Dakota American Indian business" means a business owned and controlled by a North Dakota American Indian or an Indian tribe doing business within the boundaries of a North Dakota Indian reservation, doing business within a community in North Dakota situated on or adjacent to a North Dakota Indian reservation, doing business in a community with a majority of North Dakota American Indian citizens, or doing business within the state.
5. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or corporation domiciled in North Dakota or a corporation, including a wholly owned subsidiary of a foreign corporation that does business primarily in North Dakota or does substantially all of its production in North Dakota.
- 4- 6. "Primary sector business" means an individual, corporation, partnership, or association which through a process employing knowledge and labor adds value to a product produced for resale the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth, but does not include production agriculture.
7. "Rural" means any area in the state not urban under subsection 8.
8. "Urban" means any city or contiguous cities having a population greater than thirty thousand people as determined by the latest federal decennial census.

SECTION 15. AMENDMENT. Section 10-30.3-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-02. Purpose. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new and existing or expanding businesses in North Dakota, or relocating businesses in to North Dakota. The corporation's principal mission is the development and expansion of primary sector business in North Dakota. The corporation may form additional corporations, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

The exclusive focus of this corporation is business development in the state of North Dakota, however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to North Dakota residents in the creation of jobs or secondary business.

SECTION 16. AMENDMENT. Section 10-30.3-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-03. Organization. The ~~statewide nonprofit development~~ corporation must be managed by a board of directors. The board of directors shall adopt and amend articles of incorporation and bylaws consistent with the purposes detailed in section 10-30.3-02. The board of directors consists of ~~five~~ seven members who shall serve three-year terms. The terms must be staggered so that no more than ~~two~~ three positions require reappointment in any one year. Members must be appointed by the governor who shall only consider representatives who serve in executive capacities from the following areas in making the selections: private sector manufacturing, higher education, finance, and industrial technology and research, and private sector business. There must be at least one member who is enrolled in a federally recognized North Dakota tribe with at least one-fourth degree American Indian blood quantum and one member from a rural area, on the board of directors. Members may be reappointed for additional terms.

SECTION 17. AMENDMENT. Section 10-30.3-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-05. Management. ~~The board of directors shall ensure that the corporation is managed by a full-time director~~ The deputy director of the finance division of the department must be the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the deputy director and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 18. AMENDMENT. Section 10-30.3-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.3-07. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase, to which a

loan has been made, or capital otherwise provided, under this chapter.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 19. Section 10-30.3-10 of the North Dakota Century Code is created and enacted as follows:

10-30.3-10. Primary sector development fund - Continuing appropriation. A primary sector development fund is established from moneys appropriated from the general fund. This is a revolving fund, and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11.

SECTION 20. Section 10-30.3-11 of the North Dakota Century Code is created and enacted as follows:

10-30.3-11. Primary sector development fund uses - Distribution - Limitations.

1. The fund moneys may be used for the purposes of this chapter as provided in section 10-30.3-02. Moneys may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
2. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation. The rules must include a requirement that every full-time employee of a business receiving moneys or other assistance from the primary sector development fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the life of the loan, equity position, or other financial relationship and must establish procedures for determining compliance with this requirement and sanctions for failure to comply with it. The rules must include requirements for and methods of distribution of the funds generally targeted for a distribution of forty percent businesses in rural areas, twenty percent businesses in urban areas, twenty percent North Dakota American Indian businesses, and twenty percent to be undesignated. Any unused funds in any category may be transferred to the undesignated portion during the second year of the biennium under rules adopted by the director of the department of economic development and finance. Moneys in the undesignated portion of the funds may be utilized in any of the three targeted areas.

SECTION 21. Section 10-30.3-12 of the North Dakota Century Code is created and enacted as follows:

10-30.3-12. Regional rural development revolving loan fund - Continuing appropriation. A regional rural development revolving loan fund is established. All moneys transferred to the fund, interest on moneys in the fund, and payments to the fund of principal and interest on loans made by the fund are hereby appropriated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in areas in the state which are not within five miles of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of this fund.

SECTION 22. TRANSITION. The statewide nonprofit development corporation established pursuant to North Dakota Century Code chapter 10-30.3 prior to the effective date of this Act shall continue to exist as the North Dakota economic development finance corporation. Upon the effective date of this Act, the board of directors shall amend the articles of incorporation to reflect the new name and mission of this corporation. All investments, contracts, partnerships, and business transactions of the corporation existing prior to the effective date of this Act are deemed to be as if made by the North Dakota economic development finance corporation and assets of the corporation shall be transferred to the primary sector development fund.

SECTION 23. Chapter 10-30.4 of the North Dakota Century Code is created and enacted as follows:

10-30.4-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the science and technology corporation established under this chapter.
3. "Department" means the department of economic development and finance.
4. "Primary sector business" means an individual, corporation, partnership, or association which through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth.

10-30.4-02. Purpose. It is the purpose of this chapter to create a science and technology corporation that will provide a program and budgetary interface between the department of economic development and finance and the North Dakota university system. The primary objective of the interface is to focus the intellectual and technical resources of the university system on the discovery, development, and application of scientific and technological principles and concepts on North Dakota's primary sector business.



10-30.4-03. Organization.

1. A board of directors shall manage the corporation. The board of directors shall adopt articles of incorporation and bylaws consistent with the requirements of section 10-30.4-02. The board of directors consists of:
  - a. The president of the North Dakota state university of agriculture and applied science, or the president's designee.
  - b. The president of the state university of North Dakota, or the president's designee.
  - c. A representative from the board of directors of the North Dakota economic development finance corporation appointed under section 10-30.3-03.
  - d. A representative of the North Dakota industrial development association, as appointed by that association.
  - e. Three members appointed by the governor, representing the primary sector industries of agriculture, energy, manufacturing, and export services.
2. The members appointed under subdivisions c through e of subsection 1 must be appointed in a manner that results in subsequent terms of three years staggered so that the term of at least one member expires each year. Members may be reappointed for additional terms.

10-30.4-04. Powers. The corporation must be organized as a nonprofit corporation under chapter 10-24. In addition to the powers in chapter 10-24, the corporation has the power to:

1. Encourage, facilitate, and support cooperation, interaction, and coordination of activities between federal, state, and local government agencies; the state's institutions of higher education; private and other public research organizations; and business and industry within the state on matters of science and technology, and recommend to appropriate entities those policies, procedures, organizational structures, and financial requirements that will improve the state's capacity for scientific and technological innovation and enhance the accessibility of that innovation for commercial utilization by business and industry in the state.
2. Identify the scientific and technological research, development, and education needs of business and industry in the state and the barriers that hinder the development of the technology in the global economy.
3. Identify and support:
  - a. Emerging and future technologies that offer significant potential for application in this state; and
  - b. Research opportunities at institutions of higher education and other public and private institutions in the state which offer

significant potential for fostering primary sector businesses and employment.

4. Monitor changes in national and international economic conditions which may justify a reorientation of the state's research and technology activities.
5. Work with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential federal, state, and other public and private sources of funding for the purpose of expanding the capacity of the state's universities and other institutions to focus on basic and applied research and technology transfer, product commercialization, byproduct utilization, and agricultural and industrial extension programs.
6. Receive funds from private and public sources to be expended by the corporation in a manner that effectuates the purposes of this chapter.
7. Provide support for specific projects as provided by law.
8. Have authority to do any and all other things necessary or convenient to carry out the purposes of this chapter.

10-30.4-05. Management. The board of directors shall hire, or contract for, a chief executive officer to manage the corporation. This officer shall also serve as deputy director of the division of science and technology of the department of economic development and finance. The board of directors shall determine minimum qualifications of all staff positions. All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

10-30.4-06. Confidentiality of records. To assure parties dealing with the corporation that their confidential information will not be made public and to protect the patent position of emerging technologies, the following records of the corporation are confidential:

1. Patents, trade secrets, and scientific information that is identified as proprietary and which has been submitted to the corporation on a confidential basis for consideration or investment.
2. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity to or from which a license is granted, an equity interest is acquired, or considered for acquisition under this chapter.
3. Internal or interagency memorandums, working papers, letters, or statements of evaluation which would not be available by law to a party other than in litigation with the corporation.

10-30.4-07. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements

of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

10-30.4-08. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report. This report may not include any information that is confidential as provided by law.

10-30.4-09. Divestiture. The board of directors shall establish a policy of divesting the corporation's interest in any venture or product when certain results or levels of profitability are obtained.

SECTION 24. AMENDMENT. Section 15-12-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-12-25. Grants and contributions - Continuing appropriation. The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of sections 15-12-22 through 15-12-26. Any state funding for the institute may be provided through legislative appropriation to the ~~economic development commission~~ science and technology corporation for that purpose.

SECTION 25. AMENDMENT. Section 21-11-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-02. Application for loan - Form - Contents - Preference of applications. Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the ~~North Dakota department of economic development commission and finance~~. The application ~~shall~~ must be in the form required by the ~~commission department~~ and ~~shall~~ must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the ~~commission~~ department shall consider the following factors:

1. Preference ~~shall~~ must be given to applicants with the following qualifications:
  - a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.
  - b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person or corporation owns part or all of the

stock of the applicant or is engaged in a partnership or joint enterprise with the applicant.

2. The provisions of subsection 1 ~~shall do not~~ prohibit the ~~commission department~~ from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the ~~commission department~~ such approval would better carry out the objectives of this chapter as stated in section 21-11-01.
3. Each application shall include information for the purpose of showing to the ~~commission department~~ and ~~shall may~~ be approved only if the ~~commission shall determine~~ department determines:
  - a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.
  - b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.
  - c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.
4. In considering applications the ~~commission shall have authority to~~ department may establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

SECTION 26. AMENDMENT. Section 21-11-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-03. Processing of application - Fee - Purpose. The department of economic development ~~commission and finance~~ shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. ~~Such~~ The fee shall must be deposited in a special and separate fund in the state treasury and ~~shall must~~ be expended by the ~~commission department~~ for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The ~~commission department~~ may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of ~~such~~ that investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the ~~commission department~~ such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The ~~commission shall be authorized to~~ department may conduct any private or public hearing it may deem necessary in the course of ~~such~~ that investigation or evaluation. Any unexpended portion of the funds received as an application fee ~~shall must~~ be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby appropriated from each application fee ~~such~~ these funds as may be

necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

SECTION 27. AMENDMENT. Section 21-11-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-04. Approval or rejection of application. Upon completion of all investigations and evaluations of any matter relative to the applicant or the submitted application and plan, the department of economic development commission and finance shall either reject the application as submitted, approve the application as submitted, or offer to approve the application if modified in accordance with any recommendation made by the commission as a result of any such investigation or evaluation. If the applicant fails or refuses to agree to such those modifications, the application shall must be rejected.

\* SECTION 28. AMENDMENT. Section 21-11-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-05. Approved application filed with industrial commission and legislative council. Upon approval of the application, as submitted or modified, the department of economic development commission and finance shall file such application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the state industrial commission and with the legislative council. The legislative council shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

SECTION 29. AMENDMENT. Section 21-11-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-06. Disbursements of loan - Inspection fee. If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the department of economic development commission and finance on behalf of the state. Prior to the disbursement of any funds pursuant to such the loan agreement, the applicant shall deliver to the director a supervision fee in such amount as may be specified in the loan agreement, which fee shall must be deposited in a special fund in the state treasury. Such The fee shall must be expended by the department of economic development commission and finance for the purpose of periodic inspection of the construction of such power generation or transmission facilities, and disbursements to the borrower under such the loan agreement shall may be made only upon certification by the director or a person appointed by the director that the construction is being carried on in accordance with the loan agreement and that the loan funds are due the borrower under the agreement. Upon the completion of the construction of such the facilities, any unexpended balance of such the inspection fee shall must be refunded to the borrower. There is hereby appropriated from each such inspection fee such those funds as may be necessary to provide for such the inspections and refunds as provided in this section.

\* NOTE: Section 21-11-05 was also amended by section 3 of Senate Bill No. 2073, chapter 600.

\* SECTION 30. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of state parks and recreation, the director of the department of economic development commission and finance, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

\*\* SECTION 31. AMENDMENT. Section 24-03-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-03-21. Preparation of road maps - Publication of tourist information. The commissioner shall prepare for general distribution, road maps of the state highway system and such other roads as ~~he shall deem~~ the commissioner deems necessary. Any tourist-oriented material printed on road maps ~~shall~~ must be prepared by the economic development commission department of tourism at no expense to the department of transportation.

SECTION 32. AMENDMENT. Subsection 6 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

6. Bonds guaranteed by ~~the economic development commission~~ under chapter 6-09.2.

\*\*\* SECTION 33. AMENDMENT. Subsection 1 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
  - a. The office of management and budget except with respect to rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating

\* NOTE: Section 24-02-37.1 was also amended by section 91 of Senate Bill No. 2050, chapter 231; by section 3 of Senate Bill No. 2054, chapter 640; and by section 4 of Senate Bill No. 2073, chapter 600.

\*\* NOTE: Section 24-03-21 was also amended by section 4 of Senate Bill No. 2054, chapter 640.

\*\*\* NOTE: Subsection 1 of section 28-32-01 was also amended by section 5 of Senate Bill No. 2054, chapter 640, and by section 9 of Senate Bill No. 2245, chapter 592.

to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of economic development ~~commission~~ and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.
- m. The director of institutions.
- n. The board of pardons.
- o. The parks and recreation department.
- p. The parole board.
- q. The superintendent of public instruction except with respect to rules prescribed under section 15-21-07, rules relating to teacher certification, and rules relating to professional codes and standards approved under section 15-38-18.
- r. The state board of public school education while administering the state school construction fund.
- s. The state fair association.
- t. The state toxicologist.
- u. The board of university and school lands except with respect to activities under chapter 47-30.1.
- v. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.

\* SECTION 34. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, the state department of economic development ~~commission~~ and finance, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, the state department of economic development ~~commission~~ and finance, and the state tax commissioner.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

\* NOTE: Section 52-01-03 was also amended by section 2 of Senate Bill No. 2244, chapter 568.



SECTION 35. AMENDMENT. Section 54-34-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-34-06.1. Certain architects and engineers to be provided product listing of in-state manufacturers.

1. ~~The state or any political subdivision of the state which contracts for the services of a registered architect or engineer pursuant to the requirements of section 10-12-04 or 40-02-02 shall notify the director of the economic development commission, at the time the architect or engineer is retained, of the nature of plans and specifications for the construction or work involved in the project and provide the director with information identifying the architect or engineer. The~~ Each year the director of the economic development commission department of economic development and finance immediately shall send a product listing of manufacturers located in this state to the ~~architect registered architects or engineer engineers, describing those manufacturers and their products in the following major industrial groups:~~
  - a. Lumber and wood products, except furniture;
  - b. Rubber and miscellaneous plastic products;
  - c. Stone, clay, glass, and concrete products;
  - d. Fabricated metal products, machinery, and transportation equipment; and
  - e. Any other major industrial groups that the director determines include manufactured products that may be used in the project.
2. An architect or engineer who receives a product listing under subsection 1, if possible, shall design the project with specifications that are met by listed products manufactured in this state.

SECTION 36. AMENDMENT. Section 54-34-12 of the North Dakota Century Code is amended and reenacted as follows:

54-34-12. ~~Economic Department of economic development commission and finance to establish venture capital network - Duties and functions. The department of economic development commission and finance may establish, from funds appropriated to or otherwise available to the commission department, the venture capital network as a clearinghouse for information on informal risk capital investment opportunities in the state. The economic development commission department may:~~

1. Enter into service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.

3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.
4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

SECTION 37. AMENDMENT. Section 54-34-15 of the North Dakota Century Code is amended and reenacted as follows:

54-34-15. Private sponsor. The department of economic development ~~commission~~ and finance may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

SECTION 38. Chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

54-34.3-01. Department of economic development and finance established - Mission. The North Dakota department of economic development and finance is established to assume the functions, powers, and duties of the economic development commission with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the department is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and

6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

54-34.3-02. Definitions. As used in sections 54-34.3-01 through 54-34.3-08:

1. "Department" means the department of economic development and finance.
2. "Director" means the director of the department.

54-34.3-03. Department structure. The department consists of:

1. A division of finance;
2. A division of marketing and technical assistance;
3. A division of science and technology; and
4. Other divisions that the director upon the approval of the budget section of the legislative council determines necessary to carry out most efficiently and effectively the mission and duties of the department.

54-34.3-04. Department director - Appointment - Compensation - Duties. A director shall supervise and control the department. The governor shall appoint as director a person who is qualified by training, knowledge, and experience that is necessary to ensure a high degree of professional competency in carrying out the duties of the director as enumerated in this section. The director shall serve at the will of the governor and shall receive a salary set by the governor within the limits of legislative appropriations. The director shall:

1. Manage the internal operations of the department and establish policies that promote the orderly and efficient administration of the department;
2. Appoint personnel as may be determined necessary to carry out sections 54-34.3-01 through 54-34.3-08 and fix their compensation within the limits of legislative appropriations;
3. Assume central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the department;
4. Coordinate that program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions relating to economic development, and those government entities shall advise, cooperate, and provide reasonable assistance to the director in carrying out sections 54-34.3-01 through 54-34.3-08;
5. Advise, and cooperate with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any

individual or other private or public entity, and call upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the department and the state may benefit from up-to-date technical advice, information, and assistance;

6. Cooperate with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding and to receive those funds to be expended for purposes consistent with sections 54-34.3-01 through 54-34.3-08;
7. Have authority to enter into contracts upon terms and conditions as determined by the director to be reasonable and to effectuate the purposes of sections 54-34.3-01 through 54-34.3-08;
8. Report at least annually to an interim committee designated by the legislative council on loan performance and performance of the department of economic development and finance, including evaluations of the division of finance, the division of marketing and technical assistance, and the division of science and technology. A report must include a comparison of dollars spent to the jobs created of all programs administered or supervised by the director and a review of the timeliness of the loan processing practices including a log of activities from application to final determination; and
9. Have authority to do any and all other things necessary and proper to carry out sections 54-34.3-01 through 54-34.3-08.

54-34.3-05. Division of finance - Deputy director. The director shall appoint a deputy director who shall administer the division of finance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The purpose of the division of finance is to identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the division, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the department. The division of finance shall:

1. Implement the review and decisionmaking functions of the economic development component of the state's community development block grant program established pursuant to the Housing and Community Development Act of 1974 [Pub. L. 93-383, 88 Stat. 633, 42 U.S.C. 5301 et seq.].
2. Administer other programs of financial assistance assigned to it by law or otherwise.
3. Perform such other duties as assigned to it by the director.

54-34.3-06. Division of marketing and technical assistance - Deputy director - Duties. The director shall appoint a deputy director who shall administer the division of marketing and technical assistance. The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations. The duties of

the division of marketing and technical assistance are, as consistent with the mission of the department, to:

1. Coordinate, develop, and make available technical services on the state, regional, and local levels in order to aid business and industry in their startup or expansion in the state.
2. Foster and promote international trade.
3. Collaborate in partnership with local communities in the state to provide technical assistance and to coordinate state, regional, and local programs that stimulate and support economic development activity.
4. Promote and encourage the growth and diversification of the economy, innovation, and retention of business and industry in the state.
5. Attract new business and industry from outside the state, in a manner that creates quality jobs, attracts new capital investment, and expands and diversifies the state's economic tax base.
6. Maintain and keep current available information regarding the industrial opportunities and possibilities of the state, including raw materials and byproducts, power and water resources, transportation facilities, available markets and the marketing limitations of the state, labor supply, banking and financing facilities, available industrial sites, and the advantages the state and its particular regions have as industrial locations. This information must be used for the encouragement of new industries in the state and the expansion of existing industries within the state, as well as made available to local development corporations, cities, and the various political subdivisions of the state in their efforts to encourage the location of business and industry within the state.
7. Establish an office of North Dakota American Indian business development to assist North Dakota tribal and individual economic development representatives and North Dakota American Indian entrepreneurs with access to state and federal programs designed to assist them.
8. Provide appropriate resources to ensure increased business opportunities for women.
9. Provide administrative services to the department.
10. Utilize existing marketing entities from private and other sources such as the microbusiness marketing alliance.
11. Perform such other duties as assigned to the division by the director.

54-34.3-07. Division of science and technology - Deputy director - Duties. A deputy director, hired, or contracted for, by the board of directors of the science and technology corporation and reporting administratively to the director, shall administer the division of science

and technology. The deputy director shall serve at the will of the board of directors and receive a salary set by the board within the limits of legislative appropriations. The purpose of the division of science and technology is to support the development and implementation of policies and programs that respond to the scientific and technological needs and opportunities of business and industry in the state through basic and applied research and technology transfer, product commercialization, agricultural and industrial extension, and private sector research and development. The division shall perform such duties as assigned to it by the director.

54-34.3-08. Patents. The department of economic development and finance, the science and technology corporation, the North Dakota economic development finance corporation, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

\* SECTION 39. AMENDMENT. Section 54-36-01 of the North Dakota Century Code is amended and reenacted as follows:

54-36-01. Commission - Members - Officers - Expenses of members. The North Dakota Indian affairs commission shall consist of the governor; attorney general; executive director of the department of human services; state health officer; director of job service North Dakota; the tribal chairmen of the Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian Reservations or their designees; one other representative of each reservation appointed by the tribal council; a representative of the North Dakota county commissioners' association who lives on or adjacent to an Indian reservation; a representative of the league of North Dakota cities; three members at large who must be at least one-fourth degree of Indian blood appointed by the governor; and a representative of each house of the legislative assembly who must be chosen on a bipartisan basis by the presiding officer of each house. The commission may call upon the director of the department of economic development ~~commission and finance~~ for consultation upon business and industrial matters involved in the operation of the ~~commission~~ department. The governor or ~~his~~ the governor's authorized representative shall act as chairman of the commission and the commission shall select one of its members as secretary. All members of the commission or their designees shall receive the mileage and expenses allowed state officers which must be paid from the appropriation made to such commission except mileage and expenses of state officials must be paid from the appropriation for the department they represent.

SECTION 40. AMENDMENT. Section 54-40.1-01 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-01. Legislative findings and purpose. The legislative assembly finds that the citizens of the state have a fundamental interest in the orderly development of the state and its resources. This finding recognizes the fact that the mobility of the population within and without the state presents problems which cannot always be met by individual counties or cities and that local government planning can be strengthened when aided by studies and planning of both a statewide and regional character.

The legislative assembly further finds that the state has a positive interest in the establishment, preparation, and maintenance of a long-term, continuing, comprehensive planning process for the physical, social, and

\* NOTE: Section 54-36-01 was also amended by section 2 of Bill No. 2205, chapter 602.

economic development of the state and each of its regions to serve as a guide for activities of state and local governmental units.

It is the purpose of this chapter to establish a consistent, comprehensive statewide policy for planning, economic development, program operations, coordination, and related cooperative activities of state and local governmental units and to enhance the ability of and opportunity for local governmental units to resolve issues and problems transcending their individual boundaries. In furtherance of this purpose, the legislative assembly finds that the governor, through the department of economic development ~~commission~~ and finance, is required to assure orderly and harmonious coordination of state and local plans and programs with federal, state, and regional planning and programming.

SECTION 41. AMENDMENT. Subsection 7 of section 54-40.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Office" means the department of economic development ~~commission~~ and finance.

\* SECTION 42. AMENDMENT. Section 54-40.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-04. Regional council - Powers and duties. A regional council shall:

1. Adopt agreements, rules, or procedures as may be necessary to effectuate planning in the region.
2. Coordinate planning and development within the region for all matters of regional concern as determined by the regional council, including land use, social and economic planning, transportation, health, environmental quality, water and sewerage, solid waste, flood relief, parks and open spaces, hospitals, and public buildings.
3. Participate with other public agencies and private organizations in regard to research for planning activities relevant to the region.
4. For the purpose of coordination, work with state departments, agencies, and institutions in reviewing and commenting on all plans and federal aid applications as to their impact on the region.
5. Develop guidelines for the coordination of land use plans and ordinances within the region.
6. Prepare a regional comprehensive plan and upon the preparation of such a plan or any phase, amendment, revision, extension, addition, functional part, or part thereof, file such plan, phase, functional part, amendment, revision, extension, addition, or part thereof with the office, all local planning agencies within the region, and other planning agencies in adjoining areas.
7. Develop an annual budget for operations during a fiscal year and submit the budget to participating units of general local government for approval.

\* NOTE: Section 54-40.1-04 was also amended by section 2 of House Bill No. 1497, chapter 605.

8. Receive and expend federal, state, and local funds, and contract for services with units of general local government and private individuals and organizations, consistent with the scope and objectives of a planning function.
9. Upon availability of funds, hire an executive director who must be given full control over the staff of the regional council. The executive director shall act as a liaison between the regional council and the staff of the regional council and shall advise and assist the regional council in the selection of staff.
10. Provide technical assistance for primary sector business development by leveraging local funds to assist in product development, product testing, business plan development, feasibility studies, gaining patent protection, legal services, market strategy development, and other needs to stimulate business development.
11. Host business outreach forums to stimulate entrepreneurship and interchange with potential investment.

SECTION 43. AMENDMENT. Section 54-40.1-05 of the North Dakota Century Code is amended and reenacted as follows:

54-40.1-05. Reports. Each regional council shall prepare an annual report within sixty days after the end of each fiscal year. Copies of the report must be submitted to the participating units of general local government, to the governor or his designee, to the department of economic development ~~commission~~ and finance, and to members of the legislative assembly in each region. To the extent practicable, the report must include projects completed or in progress and sources of funding.

SECTION 44. AMENDMENT. Section 54-53-02 of the North Dakota Century Code is amended and reenacted as follows:

54-53-02. Advisory transportation council - Composition. There is hereby established a transportation council which shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council and it shall elect its own chairman. The council membership shall consist of one representative from and appointed by the following organizations:

1. The greater North Dakota association.
2. The public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The livestock industry council.
6. The North Dakota wheat commission.
7. The North Dakota department of economic development ~~commission~~ and finance.



8. The North Dakota farmers grain dealers association.
9. The North Dakota railway lines.
10. The North Dakota motor carriers association.
11. The North Dakota aeronautics commission.
12. A traffic counsel selected by the members of the council appointed by the above-named organizations.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

SECTION 45. AMENDMENT. Section 55-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-06-01. Yellowstone-Missouri-Fort Union commission. There shall be a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the director of the department of economic development ~~commission~~ and finance, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

\* SECTION 46. AMENDMENT. Section 55-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. A state outdoor recreation interagency council shall exist and ~~shall be~~ is composed of the state engineer of the water commission, commissioner of the state game and fish department, superintendent of the state historical board, ~~commissioner of the state highway department~~ director of the department of transportation, executive secretary of the state soil conservation committee, state parks and recreation director, chairman of the state water commission, state health officer, director of the department of economic development ~~commission~~ and finance, state forester, and the commissioner of university and school lands. The governor or ~~his~~ the governor's designee ~~shall be~~ is council chairman.

\* NOTE: Section 55-08-02.1 was also amended by section 94 of Senate Bill No. 2050, chapter 231, and by section 19 of Senate Bill No. 2054, chapter 640.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations which are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member ~~shall have~~ shall have one vote in ~~such~~ those matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with ~~such~~ those meetings.
3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive.
4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.
5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

SECTION 47. AMENDMENT. Section 8 of House Bill No. 1046, as approved by the fifty-second legislative assembly, is amended and reenacted as follows:

SECTION 8. APPROPRIATION. There is hereby appropriated, subject to the availability of state general fund revenues as provided in section 9 of this Act, out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$9,500,000 which shall be transferred by the state treasurer to the regional rural development revolving loan fund to carry out the purposes of ~~sections 7 through 5 of this Act~~ section 10-30.3-12 created in section 21 of Senate Bill No. 2058, as approved by the fifty-second legislative assembly, for the biennium beginning July 1, 1991, and ending June 30, 1993.

\* SECTION 48. REPEAL. Sections 54-34-01, 54-34-02, 54-34-03, 54-34-03.1, 54-34-04, 54-34-05.1, 54-34-06, and 54-34-08 of the North Dakota Century Code, section 1 of chapter 112 of the 1989 Session Laws, and sections 1, 2, and 3 of House Bill No. 1046, as approved by the fifty-second legislative assembly, are repealed.

SECTION 49. COLLOCATION OF ECONOMIC DEVELOPMENT FUNCTIONS.

1. By July 1, 1992, regional councils, small business development centers, the small business management programs, area extension services, and the other regional development entities must be collocated in the various regions. Any entity not collocated as required by this subsection may not receive any further moneys from the state. The director of the department of economic development and finance may exempt an entity from this subsection for compelling reasons.

\* NOTE: Section 54-34-06 was amended by section 15 of Senate Bill No. 2054, chapter 640.

2. It is the intent of the legislative assembly that the Bank of North Dakota and the department of economic development and finance collocate in the future. The legislative council shall conduct a study concerning collocation and make recommendations to the fifty-third legislative assembly relating to methods for accomplishing the collocation, including the time frame, funding, and other elements pertinent to the collocation.

**SECTION 50. TRANSFER.** There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$23,217,457 from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993, upon the order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1992.

**SECTION 51. LEGISLATIVE INTENT.** It is the intent of the legislative assembly that the following general fund appropriations and transfers will be made by the legislative assembly for the biennium beginning July 1, 1991, and ending June 30, 1993:

Department of economic development and finance	\$ 5,265,626
Primary sector development fund	6,730,000
Science and technology corporation	3,000,000
Partnership in assisting community expansion fund	2,700,000
Agriculture partnership in assisting community expansion fund	996,000
Beginning farmer revolving loan fund	1,000,000
S.B. 2058 appropriations and transfers total	<u>\$19,691,626</u>
Commissioner of agriculture	
Pride of Dakota logo promotion	150,000
Agricultural mediation service	750,000
Agricultural products utilization commission	
Farm diversification grants	300,000
Cooperative marketing grants	200,000
Agricultural appropriations total in other bills	<u>\$ 1,400,000</u>
Total all general fund transfers and appropriations	<u>\$21,091,626</u>

**SECTION 52. APPROPRIATION - TRANSFER.** The funds provided in this section, or so much thereof as necessary, are hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income and shall be transferred to the department of economic development and finance for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$2,273,555
Information services	96,510
Operating expenses	1,509,264
Equipment	102,850
Grants	1,554,182
Total all funds	<u>\$5,536,361</u>
Less other funds	270,735
Total general fund appropriation	<u>\$5,265,626</u>

The department of economic development and finance and the commissioner of agriculture shall coordinate the pride of Dakota logo promotion initiatives and other agricultural products marketing initiatives. At least seventy-five percent of the general fund dollars appropriated for the pride of Dakota logo promotion must be used for out-of-state marketing efforts.

The department of economic development and finance, upon approval of the budget section of the legislative council, may substitute alternative positions for authorized positions to utilize its personnel in the most effective manner.

The department of economic development and finance and the North Dakota state university extension service shall coordinate their community economic development program initiatives.

On and after the effective date of this Act, the department of economic development and finance is substituted for the economic development commission for the purpose of making expenditures from the unobligated funds of the appropriation made to the economic development commission in chapter 24 of the 1989 Session Laws.

**SECTION 53. APPROPRIATION - TRANSFER.** The amount of \$6,730,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the primary sector development fund for the purposes of North Dakota Century Code section 10-30.3-11 for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 54. APPROPRIATION - TRANSFER.** The amount of \$3,500,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the science and technology corporation for the purposes of North Dakota Century Code chapter 10-30.4 for the biennium beginning July 1, 1991, and ending June 30, 1993. Of this appropriation, \$500,000 must be used to investigate and research potential value-added opportunities for livestock and crops and examine alternatives that can produce a system of agriculture which can sustain the state's present agriculture population. No more than \$300,000 of the moneys appropriated in this section may be used for administrative costs. The science and technology corporation may not duplicate, and shall coordinate with, existing programs at the university of North Dakota and North Dakota state university.

**SECTION 55. APPROPRIATION - TRANSFER.** The amount of \$2,700,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the partnership in assisting community expansion fund for the purposes of North Dakota Century Code chapter 6-09.14 for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 56. APPROPRIATION - TRANSFER.** The amount of \$996,000 is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, and shall be transferred to the agriculture partnership in assisting community expansion fund for the purposes of North Dakota Century Code chapter 6-09.13 for the biennium beginning July 1, 1991, and ending June 30, 1993.

**SECTION 57. APPROPRIATION - TRANSFER.** The amount of \$1,000,000 is hereby appropriated from the general fund in the state treasury, not

otherwise appropriated, and shall be transferred to the beginning farmer revolving loan fund for the purposes of North Dakota Century Code section 6-09-15.5 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 58. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 1991  
Filed April 19, 1991

## CHAPTER 96

HOUSE BILL NO. 1247  
(Representatives Dorso, Freier, Kretschmar)  
(Senator Holmberg)

### SECURITIES EXEMPTIONS AND FEES

AN ACT to create and enact a new subsection to section 10-04-05 of the North Dakota Century Code, relating to securities exemptions; and to amend and reenact subsection 7 of section 10-04-10 of the North Dakota Century Code, relating to fees collected by the securities commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

- a. Any security listed or designated, or approved for listing or designation upon notice of issuance on:
  - (1) The New York stock exchange;
  - (2) The American stock exchange;
  - (3) The national association of securities dealers automated quotation national market system; or
  - (4) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system.

SECTION 2. AMENDMENT. Subsection 7 of section 10-04-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Fees. The fee, which must accompany the application, for registration, transfer, and for each annual renewal thereof is:

a. For each dealer	<del>¢175.00</del>	\$200.00
b. For each salesman	<del>¢ 35.00</del>	<u>\$ 50.00</u>
c. For each investment adviser		\$100.00
d. For each investment adviser representative		\$ 35.00

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 97

HOUSE BILL NO. 1231  
(Committee on Industry, Business and Labor)  
(At the request of the Securities Commissioner)

### SECURITIES LAWS REVISIONS

AN ACT to create and enact a new subsection to section 10-04-05 and a new subdivision to subsection 1 of section 10-04-11 of the North Dakota Century Code, relating to securities exemptions and license revocation; and to amend and reenact paragraph 4 of subdivision b of subsection 9 of section 10-04-06, subsection 1 of section 10-04-10, subsection 4 of section 10-04-16.1, subsection 1 of section 10-04-17, subsections 4 and 5 of section 51-19-07, and subdivision e of subsection 2 of section 51-19-13 of the North Dakota Century Code, relating to the advertisement of securities, dealer indemnity bonds, use immunity for compelled testimony, civil statute of limitations, and franchise registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.

SECTION 2. AMENDMENT. Paragraph 4 of subdivision b of subsection 9 of section 10-04-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (4) No public advertising matter or general solicitation, other than tombstone advertisements that the commissioner shall prescribe by rule, is used in connection with any offers or sales.

SECTION 3. AMENDMENT. Subsection 1 of section 10-04-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:



- a. The name of the applicant.
- b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
- c. The form of business organization and the date of organization of the applicant.
- d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.
- e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
- f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor

highway traffic offenses and, if so, all pertinent information with respect to any such conviction.

1. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as he may deem necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he finds that the applicant is not of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

The commissioner ~~shall~~ may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit must be of such type as may be approved by the commissioner and must be in such amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

SECTION 4. A new subdivision to subsection 1 of section 10-04-11 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an agent, broker, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 5. AMENDMENT. Subsection 4 of section 10-04-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in

obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise).~~ No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 6. AMENDMENT. Subsection 1 of section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

1. That no action shall be brought under this section for the recovery of the purchase price after ~~three~~ five years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based; and

SECTION 7. AMENDMENT. Subsections 4 and 5 of section 51-19-07 of the North Dakota Century Code are amended and reenacted as follows:

4. a. If no stop order under section 51-19-09 is in effect under this chapter, registration of the offer of franchises ~~automatically becomes effective at twelve noon of the fifteenth business day after the filing of the application for registration or the last amendment thereto or at such earlier time as the commissioner determines. The registrant may request in writing a delay in effectiveness which will suspend the operation of this subdivision and upon entry by the commissioner into the register of franchises.~~
- b. A franchise offering must be deemed duly registered for a period of one year from the effective date of the registration, unless the commissioner by order or rule specifies a different period.
5. a. The registration may be renewed for additional periods of one year each, unless the commissioner by rule or order specifies a different period, by submitting to the commissioner a registration renewal statement no later than fifteen business days prior to the expiration of the registration unless such period is waived by order of the commissioner. If no stop order or other order under section 51-19-09 is in effect under this chapter, registration of the offer of the franchises ~~automatically becomes renewed effective at twelve noon of the date on which the prior registration is due to expire or at such earlier time as the commissioner determines upon entry by the commissioner into the register of franchises.~~

- b. The registration renewal statement must be in the form prescribed by the commissioner and must be accompanied by a proposed prospectus. Each such registration renewal statement must be accompanied by the fee prescribed in section 51-19-17.

SECTION 8. AMENDMENT. Subdivision e of subsection 2 of section 51-19-13 of the North Dakota Century Code is amended and reenacted as follows:

- e. No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by ~~him~~ the commissioner or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of ~~him~~ the person may tend to incriminate ~~him~~ the person or subject ~~him~~ the person to a penalty or forfeiture; ~~but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce.~~ No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 98

HOUSE BILL NO. 1451  
(Representatives Mahoney, Delzer)  
(Senator Moore)

## FILINGS WITH SECRETARY OF STATE

AN ACT to amend and reenact sections 10-15-07, 10-15-38, 10-15-52.3, 10-15-52.5, 10-15-53, subsection 11 of section 10-19.1-01, subsection 2 of section 10-19.1-03, sections 10-19.1-11, 10-19.1-14, subsection 2 of section 10-19.1-15, subsection 1 of section 10-19.1-16, section 10-19.1-23, subsection 2 of section 10-19.1-25, subsection 2 of section 10-19.1-99, subsection 4 of section 10-19.1-100, subsection 2 of section 10-19.1-101, subsection 2 of section 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112, subsection 1 of section 10-19.1-113, sections 10-22-05, 10-22-06, 10-22-13, 10-22-14, 10-22-15, subsection 2 of section 10-23-01, sections 10-24-07.1, 10-24-08, 10-24-09, 10-24-28, 10-24-30, 10-24-35, 10-24-36, 10-24-38, 10-25-04, 10-26-05, 10-26-06, 10-27-05, 10-27-06, 10-27-08, 10-27-09, 10-27-13, 10-27-14, 10-27-15, and 54-56-04 of the North Dakota Century Code, relating to requirements for filing documents with the secretary of state and to the effective dates of certain documents filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-15-07 of the North Dakota Century Code is amended and reenacted as follows:

10-15-07. ~~Articles; filing~~ Filing articles of association - Cooperative existence. ~~Duplicate originals~~ An original of the articles of association, duly signed and acknowledged, shall must be delivered to the secretary of state for filing. The legal corporate existence of a cooperative begins when the ~~duplicate~~ original articles are so delivered. The secretary of state shall stamp on ~~both originals~~ the articles of association the date of filing and ~~return one provide~~ to the cooperative with his a certificate of ~~such~~ the filing.

SECTION 2. AMENDMENT. Section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

10-15-38. Filing amendments - Limitation of action.

1. Amendments to articles ~~shall~~ must be signed ~~and acknowledged~~ by the president or a vice president and the secretary or an assistant secretary; such signatures shall be acknowledged; the amendments shall an officer of the cooperative, be sealed with the cooperative's seal, and ~~shall~~ set forth:

- a. The name of the cooperative.

- b. The amendments and date of adoption.
  - c. The number of members.
  - d. The number of members voting for and against such the amendment.
2. One copy of such the amendment ~~shall~~ must be retained in the records of the association, and one copy ~~shall~~ must be filed in the office of the secretary of state, ~~who shall issue a certificate of amendment thereon.~~
  3. No amendment may affect any existing claim for relief or proceedings to which the cooperative is a party, or existing rights of persons other than members or stockholders.
  4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of filing.

SECTION 3. AMENDMENT. Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.3. Amended certificate of authority. A foreign cooperative authorized to transact business in this state ~~shall~~ must procure an amended certificate of authority ~~in the event if~~ it changes its cooperative name, or desires to pursue in this state ~~other or additional~~ purposes other than those set forth in its prior application for a certificate of authority, by making application ~~therefor~~ to the secretary of state.

The requirements in respect to the ~~form and contents of such~~ application, ~~the manner of its execution, the filing of duplicate originals thereof with the secretary of state,~~ and the issuance of an amended certificate of authority, and the effect thereof, ~~shall be~~ are the same as in ~~the case of~~ an original application for a certificate of authority.

SECTION 4. AMENDMENT. Section 10-15-52.5 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.5. Filing of application for withdrawal for foreign cooperatives. ~~Duplicate originals of an~~ An application by a foreign cooperative for withdrawal ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that such the application conforms to the provisions of section 10-15-52.4, ~~he shall, when and that~~ all fees have been paid, the secretary of state shall

1. ~~Endorse~~ endorse on each of ~~such duplicate originals~~ the original application the word "filed", and the month, day, and year of the filing ~~thereof.~~
2. ~~File one of such duplicate originals in his office.~~
3. ~~Issue and issue~~ a certificate of withdrawal ~~to which he shall affix the other duplicate original.~~

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall

be returned to the cooperative or its representative. Upon the issuance of such the certificate of withdrawal, the authority of the cooperative to transact business in this state shall cease ceases.

SECTION 5. AMENDMENT. Section 10-15-53 of the North Dakota Century Code is amended and reenacted as follows:

10-15-53. Filing documents. ~~When~~ Except as otherwise required by law, if any document is to be filed, ~~duplicate originals shall~~ an original must be delivered to the secretary of state. ~~He,~~ who shall stamp on both the date of filing on the document and ~~return one~~ provide to the cooperative with his a certificate of filing.

SECTION 6. AMENDMENT. Subsection 11 of section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Filed with the secretary of state" means that a signed ~~duplicate originals~~ original of a document, together with the fees provided in chapter 10-23, ~~have~~ has been delivered to the secretary of state and ~~have~~ has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on ~~each~~ the original the word "filed" and the month, day, and year, ~~and~~ record the document in the office of the secretary of state, ~~and shall then return one original to the person who delivered it for filing.~~

SECTION 7. AMENDMENT. Subsection 2 of section 10-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the holders of the same proportion or number of the voting power of the shares entitled to vote that is required for amendment of the articles, of the corporation prior to the election. The ~~duplicate originals~~ original of the resolution, and articles of amendment if required, must be filed with the secretary of state, together with the fees provided in chapter 10-23. The resolution and articles of amendment become effective upon acceptance by the secretary of state ~~or at another time within thirty days after acceptance of the resolution and articles of amendment so provided.~~ If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.

SECTION 8. AMENDMENT. Section 10-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-11. Filing of articles of incorporation. ~~Duplicate originals~~ An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, and that all fees have been paid ~~as is provided in~~ under chapter 10-23, ~~then~~ the secretary of state shall issue a certificate of incorporation. ~~The certificate of incorporation and the duplicate original of the articles of incorporation must be returned to the incorporators or their representative.~~

SECTION 9. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-14. Reserved name.**

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing ~~in duplicate original~~ with the secretary of state a request that the name be reserved, together with the fees provided in chapter 10-23. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing ~~in duplicate original~~ with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in chapter 10-23.

**SECTION 10. AMENDMENT.** Subsection 2 of section 10-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall designate in its articles a registered agent. The registered agent may be an individual residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in ~~such that~~ capacity must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

**SECTION 11. AMENDMENT.** Subsection 1 of section 10-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:
  - a. The name of the corporation.
  - b. The present record address of its registered office.
  - c. The name of its registered agent.
  - d. If the address of its registered office is to be changed, the new address of its registered office.
  - e. If its registered agent is to be changed, the name of its new registered agent.
  - f. If the name of its registered agent is to be changed, the name of its registered agent as changed.



- g. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- h. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.

SECTION 12. AMENDMENT. Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-23. Filing articles of amendment. ~~Duplicate originals~~ An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in chapter 10-23, then ~~one duplicate original the articles of amendment~~ must be recorded in the office of the secretary of state, ~~while the other duplicate original must be returned to the corporation or to its representatives.~~

SECTION 13. AMENDMENT. Subsection 2 of section 10-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
  - a. Articles of amendment approved by decree or order of the court must be executed and verified ~~in duplicate~~ by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to under the provisions of an applicable statute of the United States.
  - b. ~~Duplicate originals~~ An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in chapter 10-23 ~~then one duplicate,~~ the original must be recorded in the office of the secretary of state ~~while the other duplicate original must be returned to the corporation or to its representative.~~ The articles of amendment become effective upon their acceptance by the secretary of state ~~or at another time within thirty days after their acceptance if the articles of amendment so provide.~~ The articles are deemed to be amended accordingly, ~~without any action by the directors or shareholders of the corporation and with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.~~

SECTION 14. AMENDMENT. Subsection 2 of section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of merger must be signed on behalf of each constituent corporation and filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 15. AMENDMENT. Subsection 4 of section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

4. Within thirty days after a copy of the plan of merger is mailed to shareholders of the subsidiary, or upon waiver of the mailing by the holders of all outstanding shares, the articles of merger must be signed on behalf of the parent and filed ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23.

SECTION 16. AMENDMENT. Subsection 2 of section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, articles of abandonment that contain:
  - a. The name of the corporation;
  - b. The provision of this section under which the plan is abandoned; and
  - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

SECTION 17. AMENDMENT. Subsection 2 of section 10-19.1-106 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of dissolution must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 18. AMENDMENT. Subsection 1 of section 10-19.1-108 of the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, a notice of intent to dissolve. The notice must contain:
  - a. The name of the corporation;
  - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and
  - c. A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

SECTION 19. AMENDMENT. Subsection 3 of section 10-19.1-112 of the North Dakota Century Code is amended and reenacted as follows:

3. Revocation of dissolution proceedings is effective when a notice of revocation is filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23. The corporation may thereafter resume business.

SECTION 20. AMENDMENT. Subsection 1 of section 10-19.1-113 of the North Dakota Century Code is amended and reenacted as follows:

1. Articles of dissolution for a corporation dissolving pursuant to section 10-19.1-107 must be filed ~~in duplicate original~~ with the secretary of state, along with the fees provided in chapter 10-23, after:
  - a. The payment of claims of all known creditors and claimants has been made or provided for; and
  - b. The longer of the periods described in subdivision c of subsection 1 of section 10-19.1-111 has expired, if the corporation has given notice to creditors and claimants of the corporation in the manner described in section 10-19.1-110; or ~~in all other cases,~~
  - c. ~~The~~ In all other cases, the two-year period described in subsection 2 of section 10-19.1-111 has expired.

SECTION 21. AMENDMENT. Section 10-22-05 of the North Dakota Century Code is amended and reenacted as follows:

10-22-05. Application for certificate of authority. A foreign corporation may procure a certificate of authority to transact business in this state by applying to the secretary of state. The application must set forth:

1. The name of the corporation and the state or country where it is incorporated.
2. The name of the corporation, containing the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of these words, or the name of the corporation with the word or abbreviation which it elects to add for use in this state.
3. The date of incorporation and the period of duration of the corporation.
4. The address of the principal executive office of the corporation in the state or country where it is incorporated.
5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state.
6. The purposes of the corporation which it proposes to pursue through the transaction of business in this state.

7. The names and respective addresses of the directors and officers of the corporation.
8. Any additional information ~~which~~ that is necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as prescribed in chapter 10-23.

The application must be made on forms prescribed and furnished by the secretary of state and must be executed in duplicate by the corporation's president or vice president and by its secretary or assistant secretary an officer of the corporation.

SECTION 22. AMENDMENT. Section 10-22-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-22-06. Filing of application for certificate of authority. ~~Duplicate originals of the~~ The application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated, and the consent of the designated registered agent for service of process to serve in that capacity.

The secretary of state shall, upon determining that the application conforms to law and that all fees have been paid as prescribed in chapter 10-23:

1. Endorse on each document the word "filed" and the month, day, and year of the filing.
2. File ~~one of the duplicate originals~~ of the application, the certificate of good standing or certificate of existence, and the consent of the registered agent.
3. Issue to the corporation or its representative a certificate of authority to transact business in this state ~~with the other duplicate original application affixed.~~

SECTION 23. AMENDMENT. Section 10-22-13 of the North Dakota Century Code is amended and reenacted as follows:

10-22-13. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority when the corporation changes its name or when purposes other than those set forth in its last application for a certificate of authority are sought, by making application to the secretary of state. The application, together with the required fee, must be filed within thirty days of the corporate action necessitating the filing.

The requirements for the form and contents of the application, the manner of its execution, ~~the its~~ filing of ~~duplicate originals~~ with the secretary of state, the issuance of an amended certificate of authority, and the effect of the amended certificate are the same as the original application for a certificate of authority.

An application must be accompanied by a certified statement of amendment duly authenticated by the proper officer of the state or country where the corporation is incorporated.

SECTION 24. AMENDMENT. Section 10-22-14 of the North Dakota Century Code is amended and reenacted as follows:

10-22-14. Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. ~~In order to~~ To procure a certificate of withdrawal, a foreign corporation shall deliver to the secretary of state an application for withdrawal, ~~which~~ that sets forth:

1. The name of the corporation and the state or country where it is incorporated.
2. That the corporation is not transacting business in this state.
3. That the corporation surrenders its authority to transact business in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on ~~such~~ the corporation by service on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on ~~him~~ the secretary of state.
6. A statement of the aggregate number of shares ~~which~~ that the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of ~~such~~ the application.
7. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of ~~such~~ the application.
8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of ~~such~~ the application.
9. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

The application for withdrawal must be made on forms prescribed and furnished by the secretary of state and must be executed by an officer of the corporation by its president or vice president and by its secretary or assistant secretary or, if the corporation is in the hands of a receiver or trustee, ~~must be executed~~ on behalf of the corporation by the receiver or trustee.

SECTION 25. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is amended and reenacted as follows:

10-22-15. Filing of application for withdrawal. ~~Duplicate originals of such~~ An application for withdrawal, together with the required fee, must be delivered to the secretary of state. If the application conforms to section 10-22-14, the secretary of state ~~shall~~, when all fees prescribed in chapter 10-23 have been paid-

- ~~1- Endorse, shall endorse on each of such duplicate originals the application~~ the word "filed" and the month, day, and year of the filing-
- ~~2- Retain one of the duplicate originals-~~
- ~~3- Issue and issue~~ to the corporation or its representative a certificate of withdrawal ~~with the other duplicate original affixed.~~

Upon the issuance of a certificate of withdrawal, the authority of the corporation to transact business in this state ceases.

SECTION 26. AMENDMENT. Subsection 2 of section 10-23-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The address of the registered office of the corporation in this state, ~~and~~ the name of its registered agent in this state at ~~such that~~ address, and, ~~in the case of a foreign corporation,~~ the address of its principal office ~~in the state or country under the laws of which it is incorporated.~~

SECTION 27. AMENDMENT. Section 10-24-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-07.1. Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.
2. The reservation must be made by filing ~~in duplicate original~~ with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing ~~in duplicate original~~ with the secretary of state a notice of the transfer and specifying the name and address of the transferee, with the fees provided in chapter 10-28.

SECTION 28. AMENDMENT. Section 10-24-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-08. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

1. A registered office ~~which~~ that may or may not be the same as its principal office.
2. A registered agent, ~~which agent~~ that may be an individual resident residing in this state whose business office is identical with ~~such the~~ the registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed ~~in duplicate original~~ in duplicate with the secretary of state, with the fees provided in chapter 10-28.

SECTION 29. AMENDMENT. Section 10-24-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-09. Change of registered office or registered agent. A corporation may change its registered office or ~~change its~~ change registered agent, ~~or both,~~ upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That ~~such the~~ such change was authorized by resolution duly adopted by its board of ~~directors.~~ directors.

~~Such~~ The statement must be executed by an officer of the corporation by ~~its president or a vice president~~ and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that ~~such the~~ such statement conforms to the provisions of chapters 10-24 through 10-28, ~~he~~ the secretary of state shall file ~~such the~~ such statement ~~in his office,~~ and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, ~~or both, as the case may be, shall become~~ becomes effective.

Any registered agent of a corporation may resign as ~~such~~ such agent upon filing a written notice ~~thereof, executed in duplicate,~~ with the secretary of state, who shall forthwith mail a copy ~~thereof~~ thereof to the corporation in care of an officer, who is not the resigning registered agent, at the last known address of ~~such the~~ such officer. The appointment of ~~such the~~ such agent shall

terminate ~~upon the expiration of~~ thirty days after receipt of ~~such~~ the notice by the secretary of state.

SECTION 30. AMENDMENT. Section 10-24-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-28. Incorporators. One or more persons may incorporate a corporation by signing and delivering articles of incorporation ~~in duplicate original~~ to the secretary of state.

SECTION 31. AMENDMENT. Section 10-24-30 of the North Dakota Century Code is amended and reenacted as follows:

10-24-30. Filing of articles of incorporation. ~~Duplicate originals of the~~ The articles of incorporation ~~shall must~~ be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law; ~~he shall; when~~ and that all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed~~:

- 1- ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the articles of incorporation the word "filed" and the month, day, and year of the filing thereof.~~
- 2- ~~File one of such duplicate originals in his office.~~
- 3- ~~Issue and issue a certificate of incorporation to which he shall affix the other duplicate original.~~

~~The certificate of incorporation; together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state; shall be returned to the incorporators or their representative.~~

SECTION 32. AMENDMENT. Section 10-24-35 of the North Dakota Century Code is amended and reenacted as follows:

10-24-35. Articles of amendment. The articles of amendment ~~shall must~~ be executed in duplicate by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary and ~~shall must~~ set forth:

1. The name of the corporation.
2. The amendment ~~so~~ adopted.
3. ~~where~~ If there are members having voting rights, either of the following:
  - a. A statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such the amendment received at least two-thirds of the votes ~~which that~~ members present at such the meeting or represented by proxy were entitled to cast.
  - b. A statement that such the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.



4. ~~Where~~ If there are no members, or no members having voting rights, a statement of such that fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such the amendment received the vote of a majority of the directors in office.

SECTION 33. AMENDMENT. Section 10-24-36 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-24-36. Filing of articles of amendment. ~~Duplicate originals of the~~ The articles of amendment must be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, ~~he shall, when~~ and that all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed~~:

1. ~~Endorse,~~ the secretary of state shall endorse on each of such duplicate originals the articles of amendment the word "filed" and the month, day, and year of the filing thereof.
2. ~~File one of such duplicate originals in his office.~~

~~A duplicate original of the articles of amendment must be returned to the corporation or its representative.~~

SECTION 34. AMENDMENT. Section 10-24-38 of the North Dakota Century Code is amended and reenacted as follows:

10-24-38. Restated articles of incorporation. A nonprofit domestic corporation may at any time restate its articles of incorporation as amended, in the following manner:

1. ~~Where~~ If there are members having voting rights, the board of directors ~~shall must~~ adopt a resolution setting forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of members having voting rights, ~~which may be either~~ at an annual or a special meeting. Written or printed notice setting forth the proposed restated articles of incorporation ~~shall must~~ be given each member entitled to vote at ~~such the~~ meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed restated articles of incorporation ~~shall be are~~ adopted upon receiving at least two-thirds of the votes ~~which that~~ members present at such the meeting or represented by proxy are entitled to cast.
2. ~~Where~~ If there are no members, or no members having voting rights, proposed restated articles of incorporation ~~shall be are~~ adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.
3. Upon ~~their~~ approval the restated articles of incorporation ~~shall must~~ be executed in duplicate by an officer of the corporation by its president or a vice president and by its secretary or assistant secretary and ~~shall must~~ set forth:
  - a. The name of the corporation.

- b. The period of its duration, which may be perpetual.
- c. The purpose or purposes ~~which~~ that the corporation is then authorized to pursue.
- d. Any provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, for the regulation of the internal affairs of the corporation.
- e. A statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

~~Duplicate originals of the~~ The restated articles of incorporation ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that ~~such~~ the restated articles of incorporation conform to law, and ~~that~~ all fees have ~~been~~ paid, ~~he~~ the secretary of state shall endorse on ~~each of such duplicate originals~~ the restated articles of incorporation the word "filed" and the month, day, and year of the filing thereof, ~~file one of such duplicate originals in his office,~~ and issue a restated certificate of incorporation to which ~~he shall affix the other duplicate original.~~

~~The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.~~

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation ~~shall~~ become effective and ~~still~~ supersede the original articles of incorporation and all amendments thereto.

SECTION 35. AMENDMENT. Section 10-25-04 of the North Dakota Century Code is amended and reenacted as follows:

10-25-04. Articles of merger or consolidation.

1. Upon ~~such~~ their approval, articles of merger or articles of consolidation ~~shall~~ must be executed ~~in duplicate~~ by ~~each an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary~~ and ~~shall~~ set forth:
  - a. The plan of merger or the plan of consolidation.
  - b. ~~Where~~ If the members of any merging or consolidating corporation have voting rights, then as to each ~~such~~ corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at ~~such~~ the meeting, and that ~~such~~ the plan received at least two-thirds of the votes ~~which~~ that members present at ~~such~~ the meeting or represented by proxy were entitled to cast, or (2) a statement that ~~such~~ the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

- c. Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such that fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such the plan received the vote of a majority of the directors in office.
2. ~~Duplicate originals of the~~ The articles of merger or articles of consolidation ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that such the articles conform to law, ~~he shall, when~~ and that all fees have been paid as prescribed in chapters 10-24 through 10-28 ~~prescribed:~~
- a. ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the~~ articles of merger or of consolidation the word "filed" and the month, day, and year of the filing thereof.
- b. ~~File one of such duplicate originals in his office:~~
- c. ~~Issue and issue~~ a certificate of merger or a certificate of consolidation to which ~~he shall affix the other duplicate original:~~
3. ~~The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.~~

SECTION 36. AMENDMENT. Section 10-26-05 of the North Dakota Century Code is amended and reenacted as follows:

10-26-05. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, ~~then when after~~ all debts, liabilities, and obligations of the corporation ~~shall~~ have been paid and discharged, or adequate provision ~~shall have~~ has been made therefor, and all of the remaining property and assets of the corporation ~~shall~~ have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution ~~shall~~ must be executed in duplicate by an officer of the corporation by its president or a vice president, and by its secretary or an assistant secretary and ~~shall~~ set forth:

1. The name of the corporation.
2. ~~Where~~ If there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such the meeting, and that such the resolution received at least two-thirds of the votes ~~which that~~ members present at such the meeting or represented by proxy were entitled to cast, or (b) a statement that such the resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
3. ~~Where~~ If there are no members, or no members having voting rights, a statement of such that fact, the date of the meeting of the board

of directors at which the resolution to dissolve was adopted, and a statement of the fact that ~~such~~ the resolution received the vote of a majority of the directors in office.

4. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
5. That all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter.
6. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

SECTION 37. AMENDMENT. Section 10-26-06 of the North Dakota Century Code is amended and reenacted as follows:

10-26-06. Filing of articles of dissolution. ~~Duplicate originals of such~~ The articles of dissolution ~~shall must~~ be delivered to the secretary of state. If the secretary of state finds that ~~such the~~ articles of dissolution conform to law, ~~he shall, when~~ and that all fees have been paid as ~~prescribed~~ in chapters 10-24 through 10-28 ~~prescribed~~.

1. ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the articles of dissolution the word "filed" and the month, day, and year of the filing thereof.~~
2. ~~File one of such duplicate originals in his office.~~
3. ~~Issue and issue a certificate of dissolution to which he shall affix the other duplicate original.~~

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of ~~such a~~ certificate of dissolution the existence of the corporation ~~shall cease ceases~~, except for the ~~purpose purposes~~ of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in chapters 10-24 through 10-28.

SECTION 38. AMENDMENT. Section 10-27-05 of the North Dakota Century Code is amended and reenacted as follows:

10-27-05. Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, ~~shall must~~ apply to the secretary of state. The application ~~shall must~~ set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The date of incorporation and the period of duration of the corporation.

3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.
4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at ~~such~~ that address.
5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.
6. The names and respective addresses of the directors and officers of the corporation.
7. ~~Such additional~~ Additional information as may be necessary or appropriate ~~in order~~ to enable the secretary of state to determine whether ~~such~~ the corporation is entitled to a certificate of authority to conduct affairs in this state.

~~Such~~ The application ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ be executed ~~in duplicate~~ by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary.

SECTION 39. AMENDMENT. Section 10-27-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-06. Filing of application for certificate of authority. ~~Duplicate originals of the~~ The application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence, duly authenticated by the incorporating officer of the state or country ~~under the laws of which~~ where it is incorporated.

If the secretary of state finds that ~~such~~ the application conforms to law; ~~he shall, when~~ and that all fees have been paid as provided in chapters 10-24 through 10-28-

- 1- ~~Endorse,~~ the secretary or state shall endorse on each of ~~such documents~~ document the word "filed" and the month, day, and year of the filing ~~thereof~~.
- 2- ~~File in his office one of such duplicate originals of the application and the good standing certificate or certificate of existence-~~
- 3- ~~Issue and issue~~ a certificate of authority to conduct affairs in this state to which he shall ~~affix the other duplicate original application.~~

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, must be returned to the corporation or its representative.

SECTION 40. AMENDMENT. Section 10-27-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-08. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state ~~shall~~ must have and continuously maintain in this state:

1. A registered office ~~which~~ that may or may not be the same as its principal office.
2. A registered agent, ~~which agent~~ that may be an individual ~~resident~~ residing in this state whose business office is identical with ~~such~~ the registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with ~~such~~ the registered office. Proof of the registered agent's consent to serve in that capacity must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-28.

SECTION 41. AMENDMENT. Section 10-27-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-09. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or ~~change~~ its registered agent, ~~or both~~, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That ~~such~~ the change was authorized by resolution duly adopted by its board of directors.

~~Such~~ The statement must be executed by an officer of the corporation by ~~its president or a vice president~~ and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that ~~such~~ the statement conforms to the provisions of this chapter, ~~he~~ the secretary of state shall file ~~such~~ the statement ~~in his office~~, and upon ~~such~~ the filing the change of address of the registered office, or the appointment of a new registered agent, ~~or both~~, ~~as the case may be~~, shall ~~become~~ becomes effective.

Any registered agent in this state appointed by a foreign corporation may resign ~~as such agent upon~~ by filing a written notice ~~thereof~~, ~~executed in duplicate~~, with the secretary of state who shall forthwith mail a copy ~~thereof~~ to the foreign corporation at its principal office in the state or

country under the laws of which it is incorporated. The appointment of such the registered agent shall terminate ~~upon the expiration of~~ thirty days after receipt of such the notice by the secretary of state.

SECTION 42. AMENDMENT. Section 10-27-13 of the North Dakota Century Code is amended and reenacted as follows:

10-27-13. Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority ~~in the event~~ if it changes its corporate name, or desires to pursue in this state ~~other or additional~~ purposes other than those set forth in its prior application for a certificate of authority, by making application ~~thereof~~ to the secretary of state.

The requirements in respect to the form and contents of such the application, the manner of its execution, ~~the or its~~ filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof, ~~shall be~~ are the same as in the case of an original application for a certificate of authority.

SECTION 43. AMENDMENT. Section 10-27-14 of the North Dakota Century Code is amended and reenacted as follows:

10-27-14. Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state ~~upon~~ by procuring from the secretary of state a certificate of withdrawal. ~~in order to procure such certificate of withdrawal, such~~ The foreign corporation ~~shall~~ must deliver to the secretary of state an application for withdrawal, ~~which shall set~~ setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. That the corporation is not conducting affairs in this state.
3. That the corporation surrenders its authority to conduct affairs in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on the corporation by service ~~thereof~~ of process on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on ~~him~~ the secretary of state.

The application for withdrawal ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ be executed by an officer of the corporation by its president or a vice president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, ~~shall be~~ executed on behalf of the corporation by such the receiver or trustee.

SECTION 44. AMENDMENT. Section 10-27-15 of the North Dakota Century Code is amended and reenacted as follows:

10-27-15. Filing of application for withdrawal. ~~Duplicate originals of such~~ The application for withdrawal ~~shall~~ must be delivered to the secretary of state. If the secretary of state finds that ~~such the~~ application conforms to the provisions of section 10-27-14, ~~he shall, when and that~~ all fees have been paid as is provided in chapters 10-24 through ~~10-28.~~

- 1- ~~Endorse, the secretary of state shall endorse on each of such duplicate originals the application for withdrawal~~ the word "filed" and the month, day, and year of the filing ~~thereof.~~
- 2- ~~File one of such duplicate originals in his office.~~
- 3- ~~Issue and issue a certificate of withdrawal to which he shall affix the other duplicate original.~~

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of ~~such the~~ certificate of withdrawal, the authority of the corporation to conduct affairs in this state ~~shall cease~~ ceases.

SECTION 45. AMENDMENT. Section 54-56-04 of the North Dakota Century Code is amended and reenacted as follows:

54-56-04. Charter public corporations. The children's services coordinating committee may charter public corporations to implement programs for the classes of children and programs described in section 54-56-03. The committee shall prescribe conditions for the creation, continuance, and ~~longevity~~ duration of ~~such those~~ corporations. Each ~~such~~ corporation must possess all powers and perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, receive and expend moneys, employ personnel, and convey property ~~as that~~ comes into its possession by will or otherwise. The employees of ~~such those~~ corporations ~~must be deemed state employees for purposes of immunity and participation in fringe benefits~~ are not liable for acts performed within the scope of their employment, as defined in section ~~26.1-21-10.1.~~ After approval by the children's services coordinating committee, ~~the a corporate charters become~~ charter becomes effective upon filing with the secretary of state ~~or at a later date cited in the charter.~~

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 99

HOUSE BILL NO. 1507  
(Mahoney, Urlacher)

### FOREIGN CORPORATIONS

AN ACT to amend and reenact sections 10-22-01, 10-27-01, and 57-39.2-23 of the North Dakota Century Code, relating to the right of foreign corporations to transact business in this state and the release of certain confidential information by the tax commissioner; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is amended and reenacted as follows:

10-22-01. Admission of foreign corporation - Transacting business and obtaining licenses and permits. No foreign corporation may transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. No foreign corporation may ~~procure a certificate of authority under this chapter~~ to transact in this state any business ~~which that~~ is prohibited a corporation organized under chapters 10-19.1, 10-22, and 10-23. A foreign corporation may not be denied a certificate of authority because the laws of the state or country where the corporation is organized differ from the laws of this state, and nothing in chapters 10-19.1, 10-22, and 10-23 authorizes this state to regulate the organization or the internal affairs of a foreign corporation.

A Without excluding other activities that may not constitute transacting business, a foreign corporation is not considered to be transacting does not transact business in this state, for the purposes of chapters 10-19.1, 10-22, and 10-23, by reason of carrying on because it conducts in this state any one or more of the following activities which do not constitute transacting business in this state, including:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting a settlement of any claim or dispute.
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
5. Effecting sales through independent contractors.

6. Soliciting or procuring orders through any means where the orders require acceptance outside this state before becoming binding contracts.
7. Creating evidences of debt, mortgages, or liens on real or personal property.
8. Securing or collecting debts or enforcing any rights in property securing a debt or right.
9. Transacting any business in interstate commerce.
10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This section does not affect the taxation of or service of process on foreign corporations.

SECTION 2. AMENDMENT. Section 10-27-01 of the North Dakota Century Code is amended and reenacted as follows:

10-27-01. Admission of foreign corporation - Conducting affairs and obtaining licenses and permits. No foreign corporation shall have the right to may conduct affairs in this state or obtain any license or permit required by this state until it shall have has procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to may conduct in this state any affairs which that a corporation organized under chapters 10-24 through 10-28 is not permitted to conduct. A foreign corporation shall may not be denied a certificate of authority by reason of the fact that because the laws of the state or country under which such where the corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize authorizes this state to regulate the organization or the internal affairs of such a foreign corporation.

Without excluding other activities which that may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting does not conduct affairs in this state, for the purposes of chapters 10-24 through 10-28, by reason of carrying on because it conducts in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
2. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Creating evidences of debt, mortgages, or liens on real or personal property.
5. Securing or collecting debts due to it or enforcing any rights in property securing the same.

SECTION 3. AMENDMENT. Section 57-39.2-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. ~~It~~ Except as provided by law, it is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge, or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such those returns by other state officers, and at his the discretion of the commissioner furnish to the tax officials of another state other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed pursuant to under this chapter, and in the report of an audit or investigation made with respect thereto, provided only that said if the information be is furnished solely for tax purposes, and the. The multistate tax commission may make said the information available to the tax officials of any other state and the United States for tax purposes.

The commissioner is hereby authorized to may furnish to the workers compensation bureau or to, the job insurance division of job service North Dakota, and the secretary of state upon request of either the respective agency a list or lists of holders of permits issued pursuant to the provisions of under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such those permitholders, provided, that any such list shall be used by the bureau to which it is furnished. The agency may use the list or lists only for the purpose of administering the duties of such bureau the agency. The commissioner, or any person having an administrative duty under this chapter, is hereby authorized to may announce that a permit has been revoked.

SECTION 4. EXPIRATION DATE. Section 3 of this Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 100

HOUSE BILL NO. 1430  
(Representatives Bodine, Mahoney)  
(Senator Krebsbach)

## SIMILAR NAME USE

AN ACT to create and enact a new subsection to section 10-28-01 and a new subsection to section 45-10.1-15 of the North Dakota Century Code, relating to fees for filing documents related to nonprofit corporations and to limited partnerships; and to amend and reenact subsection 2 of section 10-24-07, section 10-27-03, subsection 5 of section 45-10.1-02, sections 45-11-01, 47-25-03, and 47-25-04 of the North Dakota Century Code, relating to deceptively similar corporate, limited partnership, fictitious partnership, and trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-24-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. May not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, ~~existing under any act of this state~~, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered ~~as permitted by~~ under the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the ~~office of the~~ secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25, unless there is filed with the articles the written consent of the holder of the similar name to use the name proposed by the corporation.

SECTION 2. AMENDMENT. Section 10-27-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-27-03. Corporate name of foreign corporation. ~~No~~ <sup>A</sup> certificate of authority may not be issued to a foreign corporation ~~unless~~ <sup>if</sup> the corporate name ~~of such corporation~~:

1. ~~Shall not contain~~ Contains any word or phrase ~~which~~ that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. ~~Shall not be~~ Is the same as, or deceptively similar to, the name of any domestic Corporation, whether for profit or not for profit, ~~existing under any act of this state~~, or the name of any foreign corporation, whether for profit or not for profit, authorized to

transact business or conduct affairs in this state, or a corporate name reserved or registered ~~as permitted by~~ under the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the ~~office of the~~ secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25, unless there is filed with the articles the written consent of the holder of the similar name to use the name proposed by the corporation.

3. ~~Shall be~~ is transliterated into letters of the English alphabet, if it is not in English.

SECTION 3. A new subsection to section 10-28-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 4. AMENDMENT. Subsection 5 of section 45-10.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. May not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the certificate of limited partnership a written consent of the holder of the similar name to use the name proposed by the limited partnership.

SECTION 5. A new subsection to section 45-10.1-15 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Filing a consent to use of a deceptively similar name, ten dollars.

SECTION 6. AMENDMENT. Section 45-11-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-01. Use of fictitious partnership name. ~~Every~~ Any partnership transacting business in this state under a fictitious name, or under a designation ~~not showing that does not show~~ the names of the persons interested as partners ~~in such business~~, must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. A limited partnership or a foreign limited partnership transacting business under a name filed ~~pursuant to~~ under chapter 45-10.1, and as ~~otherwise~~ provided in section 45-11-03, is not required to file a fictitious name certificate ~~pursuant to~~ under this section.

The fictitious name:

1. May not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of ~~one any of~~ such those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".

2. May not be the same as, or deceptively similar to, any corporate name, trade name, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

SECTION 7. AMENDMENT. Section 47-25-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. No trade name registered may be the same as, or deceptively similar to, any other trade name, domestic or foreign corporation name, or a name of any limited partnership authorized to do business in this state, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name.

SECTION 8. AMENDMENT. Section 47-25-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-04. Trade names - Registration - Fees - Renewal - Notice. For the registration of each a trade name as provided for in under this chapter, ~~there must be paid the registrant shall pay~~ to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a consent to use of a similar name or any other change in the original registration as provided in under this chapter. ~~Any A~~ registration remains in force for a period of five years from the date of the original registration, and may be renewed within thirty days before its expiration date by reregistering in the same manner as an original registration, if renewed within thirty days before the expiration date. The secretary of state shall notify the registrant by mail at least ninety days before the expiration of ~~such registrations~~ the registration.

Approved March 25, 1991

Filed March 26, 1991

## CHAPTER 101

SENATE BILL NO. 2531  
(Schoenwald)

### VENTURE CAPITAL QUALIFIED ENTITIES

AN ACT to amend and reenact subsection 1 of section 10-30.1-01 and subsection 1 of section 10-30.1-05 of the North Dakota Century Code, relating to the definition of a qualified entity for purposes of investment by a venture capital corporation and investments by an investor in a venture capital corporation which are eligible for an income tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-30.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Qualified entity" means a business that:
  - a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended.
  - b. Is a business which through a process employing knowledge and labor adds value to a product for resale.
  - c. Has its principal office in this state and is primarily doing business within this state.

However, after July 1, 1989, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities. ~~In addition, any venture capital corporation organized before January 1, 1989, may invest not more than five hundred thousand dollars in an entity or an affiliate of an entity that owns tax-exempt securities.~~

SECTION 2. AMENDMENT. Subsection 1 of section 10-30.1-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after July 1, 1989, is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a

business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1. For a venture capital corporation that was organized before January 1, 1989, which invested in an entity or affiliate of an entity that owned tax-exempt securities, investments made in that venture capital corporation after February 28, 1991, do not qualify for the tax credit provided by this chapter.

Approved April 3, 1991  
Filed April 4, 1991



# COUNTIES

## CHAPTER 102

SENATE BILL NO. 2334  
(Senators Lindgren, Kelly, Dotzenrod)  
(Representatives Larson, Kretschmar)

### COUNTY MANAGERSHIP ELECTION

AN ACT to amend and reenact section 11-09-02 of the North Dakota Century Code, relating to the submission of a proposed county managership form of government to a vote at the next primary or general election or a special election called by the board of county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09-02 of the North Dakota Century Code is amended and reenacted as follows:

11-09-02. Board of county commissioners to submit plan to electorate. Whenever a county managership form of government plan as provided by this chapter is submitted to a board of county commissioners pursuant to chapter 11-05.1, the board of county commissioners shall submit the question of adopting such plan to the qualified electors of the county at the next primary or general election in the manner hereinafter provided. The board of county commissioners may call a special election to submit the proposed plan to a vote of the qualified electors of the county before the next primary or general election, but the special election may not take place before the publication required by section 11-09-04 has been completed.

Approved March 14, 1991  
Filed March 15, 1991

**CHAPTER 103**

SENATE BILL NO. 2333  
(Senators Lindgren, Dotzenrod, Kelly)  
(Representatives Larson, Kretschmar)

**COUNTY HOME RULE CHARTER ELECTIONS**

AN ACT to amend and reenact sections 11-09.1-03 and 11-09.1-04 of the North Dakota Century Code, relating to the submission of a proposed county home rule charter to a vote of qualified electors at a special election and the time of taking effect of an approved county home rule charter.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-03. Submission of charter to electors. At least sixty days after publication, the proposed charter must be submitted to a vote of the qualified electors of the county at the next primary or general election. If the proposed charter has been submitted to a vote of the qualified electors of the county, the board of county commissioners may call a special election to resubmit the proposed charter to a vote of the qualified electors of the county, and the special election must take place at least sixty days after the call for the special election.

SECTION 2. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. Ratification by majority vote - Supersession of existing charter and conflicting state laws - Filing of copies of new charter. If a majority of the qualified electors voting on the charter at the election vote in favor of the home rule charter, it is ratified and becomes the organic law of the county on the first day of January or July next following the election, and extends to all its county matters. The charter and the ordinances made pursuant to the charter in county matters must be liberally construed to supersede within the territorial limits and jurisdiction of the county any conflicting state law except for any state law as it applies to cities or any power of a city to govern its own affairs, without the consent of the governing body of the city. No ordinance of a home rule county shall supersede section 49-22-16. One copy of the charter as ratified and approved must be filed with the secretary of state, one with the clerk of district court for the county, and one with the auditor of the county to remain as a part of its permanent records. Courts shall take judicial notice of the charter.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 104

SENATE BILL NO. 2484  
(Senator Graba)  
(Representatives Flaagan, Martin, Kretschmar)

### COUNTY OFFICIALS' SALARIES

AN ACT to amend and reenact section 11-10-10 of the North Dakota Century Code, relating to the salaries of county officials; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-10. Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, clerk of district court, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.
2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
  - a. ~~Fifteen~~ Seventeen thousand ~~one hundred~~ dollars in counties having a population of less than eight thousand.
  - b. ~~Fifteen~~ Seventeen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

The compensation for the clerk of a district court which is funded by the state pursuant to section 11-17-11 must be set by the supreme court as a part of the judicial branch personnel system.

3. Repealed by S.L. 1975, ch. 87, § 2.
4. The salaries of the judges of county courts must be as provided in section 27-07.1-04. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.
5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ~~eight ten~~ thousand ~~two hundred~~ dollars in counties with a population in excess of ten thousand and a maximum of ~~seven nine~~ thousand ~~five~~ ~~three hundred~~ dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
  - a. ~~Seventeen~~ ~~Nineteen~~ thousand nine hundred dollars in counties having a population with less than eight thousand.
  - b. ~~Eighteen~~ ~~Twenty~~ thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive ~~the same minimum annual salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985~~ forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985 full-time state's attorney. ~~The increase in salary necessary to meet the minimum may be spread over a two-year period with a minimum of a fifty percent increase for the first year. In addition, the county may increase that amount, if, in the judgment of such board, by reason of duties performed, the state's attorney merits the increase.~~

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1992.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 105

SENATE BILL NO. 2325  
(Senator Lindgren)  
(Representative Larson)

### COUNTY COMMISSION MEETING TIMES

AN ACT to amend and reenact section 11-11-05 of the North Dakota Century Code, relating to the time of meetings of the board of county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-05 of the North Dakota Century Code is amended and reenacted as follows:

11-11-05. Meetings of board - Time and place. The board of county commissioners shall meet and hold sessions for the transaction of business at the courthouse, or at the usual place of holding court, ~~on~~ in the first ~~Tuesday in week of~~ January, April, July, and October of each year, and may adjourn such meetings from time to time. The county auditor shall have power to call special sessions when the interests of the county demand it. The chairman of the board, or a majority of the members thereof, may call special sessions upon giving five days' notice of the time and object of the meeting by publishing the notice in the official newspaper of the county, or by giving personal notice, in writing, to all the members of the board.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 106

SENATE BILL NO. 2117  
(Committee on Political Subdivisions)  
(At the request of the State Auditor)

### COUNTY FINANCIAL STATEMENT DATE

AN ACT to amend and reenact section 11-11-11 of the North Dakota Century Code, relating to the due date for county auditors to prepare general purpose financial statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-11-11. General duties of board of county commissioners. The board of county commissioners:

1. Shall superintend the fiscal affairs of the county.
2. Shall supervise the conduct of the respective county officers.
3. May cause to be audited and verified the accounts of all officers having the custody, management, collection, or disbursement of any moneys belonging to the county or received in their official capacity.
4. Before ~~February first~~ March fifteenth of each year, shall have the county auditor prepare general purpose financial statements in accordance with generally accepted accounting principles. Public notice that financial statements have been prepared and are available for inspection must be published in the official newspaper.

Approved April 2, 1991  
Filed April 4, 1991

**CHAPTER 107**

HOUSE BILL NO. 1604  
(Kretschmar)  
(Approved by the Committee on Delayed Bills)

**COUNTY BIDDING REQUIREMENTS**

AN ACT to amend and reenact section 11-11-26 of the North Dakota Century Code, relating to bid requirements for purchases by counties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-26 of the North Dakota Century Code is amended and reenacted as follows:

11-11-26. When board shall advertise for bids. When the amount to be paid during the current year for the erection of county buildings, ~~for the purchase of fuel,~~ or for election ballots and supplies exceeds ~~twenty five hundred ten thousand~~ dollars, the board of county commissioners shall cause an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as it shall deem advisable. The first publication shall be made at least ~~thirty~~ fifteen days prior to the day set for the opening of the bids. For the purchase of fuel when the amount exceeds four thousand dollars, the board of county commissioners shall seek bids either by telephone solicitation from at least two suppliers, or by an advertisement for bids to be published at least once each week for two successive weeks in the official newspaper of the county and in such other newspapers as the board deems advisable.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 108

HOUSE BILL NO. 1177  
(Committee on Political Subdivisions)  
(At the request of the Economic Development Commission)

### JOBS DEVELOPMENT AUTHORITIES

AN ACT to create and enact a new subsection to section 11-11.1-03, a new section to chapter 11-11.1, a new subsection to section 40-57.4-03, and a new section to chapter 40-57.4 of the North Dakota Century Code, relating to county and city jobs development authorities; and to amend and reenact subsection 4 of section 11-11.1-01 and subsection 29 of section 57-15-06.7 of the North Dakota Century Code, relating to the membership of the county jobs development authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 11-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. The remaining members shall be selected from a list of candidates from the following fields:
  - a. A representative of the local job service office nearest the county seat.
  - b. A member of the local airport authority.
  - c. A member of a local institution of higher education.
  - d. A member from among the school boards of the county.
  - e. A member from a local industrial development organization.
  - f. A member of the regional planning council serving the county.
  - g. A member of the legislative assembly representing a district within the county.
  - h. Members at large from the ~~business community~~ within the county.

SECTION 2. A new subsection to section 11-11.1-03 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.

SECTION 3. A new section to chapter 11-11.1 of the North Dakota Century Code is created and enacted as follows:

Dedication of tax revenues. The governing body of a county may dedicate any portion of revenues from the tax authorized under this chapter to payment of any loan entered or grant awarded for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.

SECTION 4. A new subsection to section 40-57.4-03 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To loan, grant, or convey any funds or other real or personal property held by the authority for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.

SECTION 5. A new section to chapter 40-57.4 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Dedication of tax revenues. The governing body of a city may dedicate any portion of revenues from the tax authorized under this chapter to payment of any loan entered or grant awarded for any purpose necessary or convenient to carry into effect the objective of the authority established by this chapter.

SECTION 6. AMENDMENT. Subsection 29 of section 57-15-06.7 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29. A county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a tax not exceeding four mills on the taxable valuation of property within the county, unless. However if any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization and the total of the county and city levies exceeds four mills, in which case the county tax levy under this subsection may be applied only against the taxable valuation of property outside the limits of any city levying a tax within the city levying under subsection 28 of section 57-15-10 must be reduced so the total levy in the city does not exceed four mills.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 109

SENATE BILL NO. 2327  
 (Senators Stenehjem, Graba, Meyer)  
 (Representatives Kretschmar, Dalrymple)

## PAYMENT OF PROPERTY TAX

AN ACT to provide authority for a borrower to direct the time of payment of property taxes by an escrow agent under a residential real estate loan; and to amend and reenact section 11-13-12 of the North Dakota Century Code, relating to the county auditor's statement regarding current taxes on deeds and other instruments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-12 of the North Dakota Century Code is amended and reenacted as follows:

11-13-12. Auditor's certificate of taxes ~~paid~~ on deeds, contracts for deed, plats, replats, and patents.

1. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, ~~he~~ the auditor shall ascertain from the books and records in ~~his~~ the auditor's office and in the office of the county treasurer ~~if~~ whether there are delinquent taxes or special assessments against the land described in the instrument or ~~if such~~ whether the land has been sold for taxes.
  - a. If there are delinquent taxes or ~~delinquent~~ special assessments or installments of special assessments against lands described in the instrument, ~~he~~ the auditor shall certify the same. When the receipt of the county treasurer is produced for the delinquent taxes or special assessments or installments of special assessments, the county auditor shall enter on ~~every deed, contract for deed, or patent so transferred, the instrument over his~~ the auditor's official signature: "Delinquent taxes and special assessments or installments of special assessments paid and transfer entered", ~~or if.~~
  - b. If the land described has been sold for taxes to a purchaser other than the county, ~~he~~ the auditor shall enter "Taxes paid by sale of the land described ~~within~~ and transfer entered", ~~or if.~~
  - c. If the instrument presented is entitled to record without regard to taxes, ~~he~~ the auditor shall enter "Transfer entered".
2. Whenever a deed, contract for deed, or patent is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office whether there are current taxes or current special assessments against the land described in

the instrument. If there are current taxes or current special assessments or installments of special assessments against the land described in the instrument, the auditor shall place a statement on the instrument showing the amount of any current taxes or current special assessments or installments of special assessments. For purposes of this subsection:

a. "Current special assessments" means assessments that have been certified to the county auditor for collection but are not yet delinquent.

b. "Current taxes" means real estate taxes, as shown on the tax list prepared by the county auditor, which are not yet delinquent.

3. Whenever a plat, replat, auditor's lot, or any instrument that changes the current property description, including condominium ownership established under chapter 47-04.1, is presented to the county auditor for transfer, the auditor shall ascertain from the books and records in the auditor's office and in the office of the county treasurer ~~if~~ whether there are current or delinquent taxes, special assessments, and, after February first of each year, the tax estimate for that year against the land described in the instrument or ~~if such~~ whether the land has been sold for taxes. If there are current taxes, delinquent taxes, delinquent special assessments, installments of special assessments, or tax estimates against lands described in the instrument, the auditor shall certify the same.

SECTION 2. Definitions. In sections 2 and 3 of this Act, unless the context or subject matter otherwise requires:

1. "Escrow agent" means a person who receives escrow payments on behalf of itself or another person.

2. "Loan" means a loan under which an escrow is required by the lender to assure payment of property taxes and which is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence, not including a mobile home.

SECTION 3. Payments from escrow - Notice - Liability of lender or escrow agent.

1. If the borrower notifies the escrow agent as provided in subsection 2, is current in loan payments, and funds in the escrow account are sufficient, the borrower may direct the escrow agent under the borrower's loan to do any of the following:

a. Pay the property taxes by December thirty-first, if the escrow agent has received a tax statement for that property by December twentieth.

b. Pay the property taxes on or before February fifteenth to qualify for the discount for early payment under section 57-20-09.

- c. Pay the property taxes when due.
2. To require the escrow agent to make payments in any of the manners specified in subsection 1, the borrower shall send, by December first, written notice to the escrow agent specifying the manner in which the borrower wants the escrow agent to make payments under subsection 1. Once notified, the escrow agent shall annually make payments in that manner unless the borrower is not current in loan payments, unless funds in the escrow account are not sufficient, or unless otherwise notified in writing by the borrower by December first. If the borrower has never provided a written notice to the escrow agent, the escrow agent shall pay property taxes as provided in subdivision b of subsection 1.
3. An escrow agent who fails to comply with a directive of a borrower under subsection 1 made within the time limitations under subsection 2 is liable to the borrower for five hundred dollars plus actual damages, costs, and reasonable attorney fees.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 110

SENATE BILL NO. 2454  
(Senator Goetz)  
(Representative R. Anderson)

## COUNTY FEES

AN ACT to amend and reenact section 11-15-07 of the North Dakota Century Code, relating to county fees charged and collected by the sheriff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-15-07. County fees. The sheriff shall charge and collect the following fees on behalf of the county:

1. ~~For serving a capias with commitment of bail and return, twenty-five dollars.~~
- 2- For serving a summons, writ of attachment, writ of execution, subpoena, notice of motion, or other notice or order of the court, order of replevin, injunctional order, citation, and or any other mesne process and making a return thereon, in addition to the actual incurred costs of postage and long distance telephone calls a total of ten dollars for each person served at different locations.
- 3- 2. For making a copy of a summons or order of attachment, two dollars return of not-found, ten dollars.
- 4- For making a copy of an injunctional order, two dollars.
- 5- For serving a subpoena on a witness, each person, ten dollars.
- 6- 3. For taking and filing a bond in claim and delivery or any other undertaking to be furnished and approved by the sheriff, ten dollars.
- 7- 4. For making a copy of any process, bond, or paper, other than as is herein provided, two dollars per page.
- 8- 5. For levying a or executing any writ of execution and making a return thereof, twenty-five dollars.
- 9- For levying a writ of possession with the aid of the county, ten dollars.
- 10- For levying a writ of possession without the aid of the county, ten dollars.

- ~~11.~~ For serving a notice of motion or other notice or order of the court, ten dollars.
- ~~12.~~ For executing a writ of habeas corpus and making a return thereon, ten dollars.
- ~~13.~~ For serving a writ of restitution and making a return thereon, ten dollars.
- ~~14.~~ 6. For calling an inquest to appraise any goods and chattels which he that the sheriff may be required to have appraised, ten dollars, and each appraiser shall receive fifty dollars to be taxed as costs.
- ~~15.~~ 7. For advertising a sale in a newspaper by means of a sheriff's notice of sale, in addition to the publisher's any publishing fees, ten dollars.
- ~~16.~~ For advertising in writing for the sale of personal property, five dollars.
- ~~17.~~ For executing a writ or order of partition, ten dollars.
- ~~18.~~ 8. For making a deed to land sold on execution or pursuant to an order of sale, ten dollars.
- ~~19.~~ 9. For issuing a certificate of redemption when property has been redeemed from a sale under execution or upon the foreclosure of a mortgage, ten dollars.
- ~~20.~~ 10. For selling real or personal property under foreclosure of any lien or mortgage by advertisement, fifty dollars.
- ~~21.~~ 11. For boarding prisoners, a sum to be determined by the county commissioners, by resolution in advance, which sum must be per meal for meals actually served, and must be not less than two dollars for breakfast, two dollars and fifty cents for dinner, and three dollars and fifty cents for supper.

Approved April 3, 1991  
Filed April 4, 1991

**CHAPTER 111**

HOUSE BILL NO. 1488  
(Kelsch)

**SHERIFF COMMISSIONS**

AN ACT to amend and reenact subsection 1 of section 11-15-08 and section 11-15-09 of the North Dakota Century Code, relating to commissions collected by the sheriff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-15-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section 11-15-09, the sheriff is entitled to collect commissions on behalf of the county on all moneys received and disbursed by the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property as follows:
  - a. On the first one thousand dollars, fifty dollars.
  - b. On all moneys in excess of one thousand dollars, one percent.

SECTION 2. AMENDMENT. Section 11-15-09 of the North Dakota Century Code is amended and reenacted as follows:

11-15-09. Allowances when plaintiff bids in property at sale. When the person in whose favor an execution or order of sale has been issued by the court ~~shall bid~~ bids in the property sold under the execution or pursuant to the judgment, the sheriff or other person making the sale shall collect on behalf of the county either of the following ~~fee~~ fees, and no more:

1. When the amount for which the property is bid on does not exceed one thousand dollars, ~~ten~~ twenty dollars.
2. When the amount for which the property is bid on exceeds one thousand dollars, ~~twenty~~ thirty dollars.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 112

SENATE BILL NO. 2434  
(Senator Redlin)  
(Representative Kretschmar)

### STATE'S ATTORNEY REPRESENTATION OF CITY

AN ACT to amend and reenact subsection 5 of section 11-16-05 of the North Dakota Century Code, relating to restrictions on the powers of state's attorney.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 11-16-05 of the North Dakota Century Code is amended and reenacted as follows:

5. Be concerned as attorney or counsel for any party, other than the state or county, or other than a city within the county, when so authorized by resolution of the board of county commissioners, in any action or proceeding whatsoever when employed by a county having a population exceeding thirty-five thousand or by any other county whose board of commissioners has, by resolution, determined that the state's attorney shall be restricted in this manner. A board of county commissioners may adopt or rescind ~~this~~ a resolution under this subsection in any year. However, in the general election year in which the state's attorney is to be elected, such action must be taken prior to June first. Such adoption or rescission shall not be effective during the state's attorney's current term of office unless agreed upon between the board and the state's attorney.

Approved April 3, 1991  
Filed April 4, 1991

**CHAPTER 113**

SENATE BILL NO. 2248  
(Maxson, Stenehjem)

**DEED CONSIDERATION STATEMENT EXCEPTION**

AN ACT to amend and reenact subsection 6 of section 11-18-02.2 of the North Dakota Century Code, relating to an exception to the requirement of statements of full consideration to be included in deeds if the deed is issued after a judgment; and to provide a retroactive effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 11-18-02.2 of the North Dakota Century Code is amended and reenacted as follows:

6. The provisions of this section ~~shall~~ do not apply to deeds transferring title to the following types of property, or to deeds relating to the following transactions:
  - a. Property owned or used by public utilities.
  - b. Property classified as personal property.
  - c. A sale where the grantor and the grantee are of the same family or corporate affiliate, if known.
  - d. A sale which resulted as a settlement of an estate.
  - e. All sales to or from a government or governmental agency.
  - f. All forced sales, mortgage foreclosures, and tax sales.
  - g. All sales to or from religious, charitable, or nonprofit organizations.
  - h. All sales where there is an indicated change of use by the new owners.
  - i. All transfer of ownership of property for which is given a quitclaim deed.
  - j. Sales of property not assessable by law.
  - k. Agricultural lands of less than eighty acres [32.37 hectares].
  - l. A transfer that is pursuant to a judgment.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 114

SENATE BILL NO. 2493  
(Tomac)

### RECORDING FEES FOR LARGE TRACTS

AN ACT to amend and reenact subdivision b of subsection 1 of section 11-18-05 of the North Dakota Century Code, relating to recording fees charged by the register of deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 11-18-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, five dollars for the first page and two dollars for each additional page plus three dollars for each such additional instrument ~~containing a different legal description.~~ In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.

Approved April 5, 1991  
Filed April 8, 1991

# CORRECTIONS, PAROLE, AND PROBATION

## CHAPTER 115

HOUSE BILL NO. 1165  
(Committee on Judiciary)  
(At the request of the Department of Corrections  
and Rehabilitation)

### JAIL RULE ADOPTION

AN ACT to amend and reenact subsection 1 of section 12-44.1-24 of the North Dakota Century Code, relating to the removal of the requirement that the Administrative Agencies Practice Act be complied with in adopting jail rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12-44.1-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Prescribe rules and regulations pursuant to chapter 28-32 establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 116

HOUSE BILL NO. 1201  
(Committee on State and Federal Government)  
(At the request of the Department of Corrections and  
Rehabilitation)

**MISSOURI RIVER CORRECTIONAL CENTER**

AN ACT to amend and reenact sections 12-48-03.1, 12-48.1-01, 12-48.1-02, 12-51-01, 12-51-02, 12-51-04, 12-51-05, 12-51-06, 12-51-07, 12-51-09, 12-51-10, 12-51-11, 12-59-05, 12-59-07, subsection 6 of section 12-59-15, section 12-59-16, paragraph 1 of subdivision c of subsection 1 and subsection 9 of section 12.1-32-02, subsection 4 of section 12.1-34-01, section 18-08-12, subsection 1 of section 54-14-03.2, and section 54-23.3-01 of the North Dakota Century Code, relating to changing the name of the North Dakota state farm to the Missouri River correctional center and providing that the department of corrections and rehabilitation is part of the office of the governor; and to repeal section 12-51-03 of the North Dakota Century Code, relating to the location and use of buildings of the North Dakota state farm.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48-03.1. The director of the department of corrections and rehabilitation may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of the department of corrections and rehabilitation, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the ~~North Dakota state farm~~ Missouri River correctional center, and the inmates of the institutions. The warden, with the approval of the director, may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. Except as provided in subsections 1, 2, and 3, the director may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products must be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies, and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such

purchase from the prison is impractical or prohibited by law. The warden shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberesin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit, or through export firms for sale to international markets.
2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of institutions or by the director of the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12-48.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. Director may provide certain services for inmates. The director of the department of corrections and rehabilitation may participate in programs under which inmates sentenced to the penitentiary ~~and the state farm~~ or the Missouri River correctional center may be gainfully employed or participate in an educational or other rehabilitation program either in or outside the institution. The director may obtain separate facilities with minimum security for the housing of inmates granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an inmate so released, the director may arrange for the housing of the inmate in local confinement facilities.

SECTION 3. AMENDMENT. Section 12-48.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of eligibility for release programs. An inmate is eligible for programs outside the institution when the warden determines the inmate is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. An inmate may make application to the warden for permission to participate in such programs. The warden, with the approval of the director of the department of corrections and rehabilitation, may authorize participation in outside programs for an inmate who has been sentenced to ten years or less to the

state penitentiary or ~~state farm~~ the Missouri River correctional center. In sentences of more than ten years, the parole board, after approval by the warden, may authorize participation in outside programs. The application must include a statement that the inmate agrees to abide by all terms and conditions of the particular plan adopted for him, and must state the name and address of the proposed employer, if any, and must contain such other information as the parole board may require. The parole board may approve, disapprove, or defer action on an application approved by the warden. The plan must be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the warden or the parole board at any time after being granted. The parole board and warden shall prescribe rules of conduct and treatment for all inmates on release programs. Short leaves, not to exceed seventy-two hours, may be granted, by the warden, with the approval of the director of the department of corrections and rehabilitation, to inmates with sentences of ten years or less and by the parole board, with the warden's approval to inmates with sentences of more than ten years and upon recommendation by the warden, to all inmates of the ~~state farm and to penitentiary or the Missouri River correctional center~~ inmates who have been on work or education release programs for at least thirty days. All rules adopted by the parole board and the warden relating to release programs and short leaves must conform, to the extent allowable by law, with executive order No. 11755 issued by the President of the United States.

SECTION 4. AMENDMENT. Section 12-51-01 of the North Dakota Century Code is amended and reenacted as follows:

12-51-01. Establishment of ~~North Dakota state farm~~ Missouri River correctional center. There is established a correctional institution for male and female violators of the law, to be known as the ~~North Dakota state farm~~ Missouri River correctional center.

SECTION 5. AMENDMENT. Section 12-51-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-51-02. Purpose of ~~state farm~~ Missouri River correctional center. It is the purpose of the ~~state farm~~ Missouri River correctional center to employ in manual labor the prisoners committed or transferred thereto. Said ~~farm center~~ must be administered as a work ~~farm and treatment center~~ for the purpose of assisting in the rehabilitation of the prisoners committed thereto, and with the purpose of furnishing to them labor, instruction, and supervision that will accomplish the purpose sought in this chapter. The director of the department of corrections and rehabilitation may provide for such labor, instruction, and supervision for the persons committed to the ~~state farm~~ Missouri River correctional center.

SECTION 6. AMENDMENT. Section 12-51-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-51-04. ~~Farm Center~~ operated with penitentiary - Warden to be superintendent - Employment of help. The director of the department of corrections and rehabilitation shall have charge and control of the ~~state farm~~ Missouri River correctional center, and all property which said director has received or acquired, or hereafter may receive or acquire, in connection with the establishment and operation of said ~~farm center~~. For administrative and operational purposes, the said ~~farm center~~ must be deemed a facility of the state penitentiary and must be operated in connection therewith. The

warden of the penitentiary must be the superintendent or chief administrative officer of the farm center. Machinery, equipment, livestock, and other property of the penitentiary and of the farm center may be used interchangeably. The warden may employ such employees as may be necessary and as available funds will permit, and may prescribe their duties and fix their compensation. ~~The warden may assign to said farm, in any capacity, persons employed in connection with the operation of the penitentiary. Such persons may be assigned either for full-time or part-time work, and, in the judgment of the warden, the compensation of such persons may be continued to be paid and charged as before they were assigned to work at said state farm.~~

SECTION 7. AMENDMENT. Section 12-51-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-51-05. Laws governing management of state farm Missouri River correctional center. The laws relating to the government and management of, and parole from, the penitentiary, so far as the same may be applicable and not inconsistent with the provisions of this chapter, in all respects shall apply to the government and management of, and parole from, the state farm Missouri River correctional center as to the duties and authority of the director of the department of corrections and rehabilitation and the director's employees used at said state farm Missouri River correctional center.

SECTION 8. AMENDMENT. Section 12-51-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-51-06. Warden and the director of the department of corrections and rehabilitation to establish rules for control of state farm Missouri River correctional center and prisoners committed thereto. The warden with the approval of the director of the department of corrections and rehabilitation may establish, adopt, and enforce proper rules and regulations consistent with the provisions of this chapter for the control and administration of the state farm Missouri River correctional center and the prisoners committed thereto.

SECTION 9. AMENDMENT. Section 12-51-07 of the North Dakota Century Code is amended and reenacted as follows:

12-51-07. Prisoners eligible for commitment to state farm Missouri River correctional center. The judges of the district courts and county courts may commit to the state farm Missouri River correctional center, so far as the capacity of the farm center shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is more than thirty days but not more than one year provided that no person shall be committed to the state farm Missouri River correctional center who:

1. Has at any time been convicted of a sexual offense;
2. Has served a sentence or portion thereof in a correctional facility upon conviction of a felony; or
3. Has a history of moral or sexual degeneration or of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others.



SECTION 10. AMENDMENT. Section 12-51-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-51-09. Warden may transfer persons from ~~state farm~~ Missouri River correctional center to penitentiary or from penitentiary to ~~state farm~~ Missouri River correctional center. When the warden, either at the time of commitment or at any time thereafter, determines that for purposes of safety of other inmates or of the general public or for the purpose of discipline or medical care it is necessary or proper that any person committed to the ~~state farm~~ Missouri River correctional center should be transferred to the state penitentiary, such transfer may be made for such period as the warden deems proper. Where a person who has been committed to the ~~state farm~~ Missouri River correctional center interferes with the operation of the ~~farm~~ center, or with the welfare or safety of others, and where in the judgment of the warden the best interests of such person or the best interests and welfare of other persons committed to the ~~farm~~ center so require, the warden may direct that such person be removed from the ~~farm~~ center and placed in the penitentiary. The warden also may direct that persons who have been sentenced to the penitentiary be transferred to the ~~farm~~ center, when such action seems desirable and for the best interests of the person so transferred and in no manner detrimental to the welfare of other persons who have been committed to said ~~farm~~ center. The warden may cause persons committed to the said ~~farm~~ center to be assigned for work incident to the operations of the penitentiary or of any other institution or facility under the control of the warden.

SECTION 11. AMENDMENT. Section 12-51-10 of the North Dakota Century Code is amended and reenacted as follows:

12-51-10. Compensation, good time allowance, penalties of persons committed to ~~state farm~~ Missouri River correctional center. The laws relating to compensation, the merit system, good time and extra good time, and the imposition of penalties for misconduct provided by law for persons imprisoned in the penitentiary shall be applicable to persons committed to the ~~state farm~~ Missouri River correctional center, except insofar as they may be inconsistent with the provisions of this chapter.

SECTION 12. AMENDMENT. Section 12-51-11 of the North Dakota Century Code is amended and reenacted as follows:

12-51-11. Prohibition on delivery of alcoholic beverages or controlled substances to or by inmates - Penalties.

1. It shall be unlawful for any person to deliver or administer, whether or not for a consideration, any alcoholic beverage or controlled substance to any inmate of the ~~state farm~~ Missouri River correctional center, or to any other person for redelivery to an inmate of the ~~state farm~~ Missouri River correctional center. This subsection shall not apply to the delivery or administration of controlled substances or alcoholic beverages in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden.
2. No ~~state farm~~ Missouri River correctional center inmate shall possess any controlled substance or alcoholic beverage unless the substance or beverage was delivered to him or was possessed in accordance with the prescription or orders of a licensed physician.

3. Any person, other than an official or employee of the penitentiary, whether or not he is employed at the state farm Missouri River correctional center, who violates subsection 1 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 1 by delivering or administering a controlled substance is guilty of a class A felony. Any person who violates subsection 1 by delivering alcoholic beverages is guilty of a class A misdemeanor.
4. Any person who violates subsection 2 by possessing a controlled substance shall be guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages shall be guilty of a class A misdemeanor.
5. As used in this section, "controlled substance" is as defined in subsection 4 of section 19-03.1-01, and includes counterfeit substances as defined in subsection 5 of section 19-03.1-01.

SECTION 13. AMENDMENT. Section 12-59-05 of the North Dakota Century Code is amended and reenacted as follows:

12-59-05. Consideration by board - Guarantee. At a meeting to be determined by the parole board, within one year after a prisoner's admission to the penitentiary, or within six months after the prisoner's admission to the state farm Missouri River correctional center, at such intervals thereafter as it may determine and by application pursuant to section 12-59-08, the board may deny or grant parole or continue consideration to another meeting. The board shall consider all pertinent information regarding each prisoner, including the circumstances of the offense, the presentence report, the previous social history and criminal record, the conduct, employment, and attitude in prison, and the reports of such physical and mental examinations as have been made.

SECTION 14. AMENDMENT. Section 12-59-07 of the North Dakota Century Code is amended and reenacted as follows:

12-59-07. Requirements precedent to parole. No parole shall be granted to any person confined in the penitentiary or state farm the Missouri River correctional center unless:

1. He has maintained a good record at the penitentiary or state farm the Missouri River correctional center for a reasonable period prior to his application for a parole and the board is convinced that the applicant will conform to all the rules and regulations adopted by said board; or
2. A detainer has been lodged by another authority.

SECTION 15. AMENDMENT. Subsection 6 of section 12-59-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If the hearing officer determines there is probable cause, the parolee must be returned to the penitentiary or state farm the Missouri River correctional center, transferred to a county jail or the state hospital, or released from actual custody on the terms of

the parole agreement, pending a final revocation hearing before the parole board. If the board determines, at the final revocation hearing, that the parolee has violated the conditions of the parole agreement, it may order that the parolee be recommitted to the penitentiary or ~~state farm~~ the Missouri River correctional center, as provided in the parolee's sentence, to serve in custody, in the penitentiary or ~~state farm~~ the Missouri River correctional center, all or part of the remaining time of the sentence that has not been served in custody in the penitentiary or ~~state farm~~ the Missouri River correctional center.

SECTION 16. AMENDMENT. Section 12-59-16 of the North Dakota Century Code is amended and reenacted as follows:

12-59-16. Execution of order of recommitment - Fees and payment thereof. The officer executing an order for the recommitment of a prisoner to the penitentiary or ~~state farm~~ the Missouri River correctional center shall endorse a return of his doings thereon, and shall deliver the execution, a copy of the order of recommitment, and his return to the warden, with the person named therein. The warden shall deliver to such officer a certificate acknowledging the receipt of the person, the certified copy of the order, and the return, and such certificate shall be retained by the officer making the return. The fees of an officer for executing such an order shall be the same as are prescribed for the commitment of a person to the penitentiary or the ~~state farm~~ Missouri River correctional center under a sentence of the court, but in no case shall such fees exceed the sum of one hundred dollars.

SECTION 17. AMENDMENT. Paragraph 1 of subdivision c of subsection 1 of section 12.1-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (1) In a state correctional facility, a regional corrections center, a county jail, or in the ~~state farm~~ Missouri River correctional center in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.

SECTION 18. AMENDMENT. Subsection 9 of section 12.1-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as ~~state farm~~ Missouri River correctional center inmates when the sentence imposed is more than thirty days but not more than one year.

SECTION 19. AMENDMENT. Subsection 4 of section 12.1-34-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Custodial authority" includes city jail, county jail, juvenile detention center, regional corrections center, halfway house, ~~state farm~~, state penitentiary or Missouri River correctional center, state hospital, or any other inpatient mental health or treatment facility to which a criminal defendant may be sentenced or referred.

**SECTION 20. AMENDMENT.** Section 18-08-12 of the North Dakota Century Code is amended and reenacted as follows:

**18-08-12. Annual fire inspection of state buildings and institutions.** An annual fire inspection shall be performed at each state institution and building. The state fire marshal shall annually inspect the state penitentiary, ~~the state farm and the Missouri River correctional center~~, the state industrial school, the state hospital, and san haven. The annual inspection of all other state institutions and buildings shall be made by the fire department of the city or fire protection district in which the institution or building is located, at the direction of the officer in charge of the institution or building, who shall prepare a report based upon the findings of the fire inspection. The report, which shall contain specifications of any violations, shall be submitted to the responsible board, agency, or commission and a copy of the report shall be submitted to the state fire marshal. If the report indicates that any violations can be corrected within the current budget of the responsible board, agency, or commission, action to correct the violations, unless good cause can be demonstrated to the attorney general, shall be initiated within thirty days of receipt of the report by the responsible board, agency, or commission. For purposes of this section, a "fire inspection" is a procedure performed in accordance with standards set forth in the uniform building code, the code of the building officials and code administrators, or the code of the national fire protection association.

**SECTION 21. AMENDMENT.** Subsection 1 of section 54-14-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual injured by an act of a resident or an inmate of a state institution may submit a claim to the state institution where the act occurred. As used in this section, "claim" means a monetary demand upon the state for personal injury or property damage arising from an act of a resident or an inmate of a state institution, and "state institution" means the state hospital, developmental center at Grafton, state penitentiary, ~~state farm or Missouri River correctional center~~, North Dakota industrial school, school for the blind, and school for the deaf.

\* **SECTION 22. AMENDMENT.** Section 54-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-23.3-01. Department of corrections and rehabilitation - Creation - Duties - Programs.** There is hereby created a department of corrections and rehabilitation ~~in the office of that is responsible to the director of institutions~~ governor. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary, ~~state farm or Missouri River correctional center~~, parole and probation for adult offenders, state industrial school, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

**SECTION 23. REPEAL.** Section 12-51-03 of the North Dakota Century Code is repealed.

Approved April 2, 1991  
Filed April 4, 1991

\* NOTE: Section 54-23.3-01 was also amended by section 40 of Senate Bill No. 2245, chapter 592.

## CHAPTER 117

HOUSE BILL NO. 1141  
(Committee on State and Federal Government)  
(At the request of the Department of Corrections and  
Rehabilitation)

**PRISON INDUSTRY ADVISORY COMMITTEE MEMBERS**

AN ACT to amend and reenact section 12-48-06.1 of the North Dakota Century Code, relating to the appointment of board members to the prison industry advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-06.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-48-06.1. Prison industry advisory committee. There is hereby established a prison industry advisory committee which consists of the director of the department of corrections and rehabilitation and seven members, who are representative of each type of industry, three of whom are representatives of industries similar to those within the prison, and who are appointed by the governor. Prior to July 1, 1991, the governor shall appoint two board members for a term of one year, two for a term of two years, two for a term of three years, and one for a term of four years. Thereafter appointments must be for four-year terms. Members may not serve more than two consecutive terms. Meetings of the committee must be called not less than twice a year by the director who must be the chairperson of the committee who must be elected from within the membership. The appointed members must be paid mileage and expenses by the prison industry as authorized for state officials and employees.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 118

HOUSE BILL NO. 1212  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### INMATE SENTENCE REDUCTIONS

AN ACT to amend and reenact sections 12-54.1-01, 12-54.1-03, and 12-54.1-04 of the North Dakota Century Code, relating to the sentence reduction provisions for inmates at the state penitentiary and its affiliated facilities; and to repeal section 12-54.1-02 of the North Dakota Century Code, relating to good conduct sentence reduction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Good conduct Performance based sentence reduction. Offenders sentenced to the penitentiary or ~~state farm~~ any of its affiliated facilities shall be eligible to earn good conduct sentence reductions-

~~Whenever two or more sentences have been imposed upon an offender, the aggregate of the several sentences shall be the basis for determining the rate of reduction. Sentences may be reduced at the following rates:~~

- ~~1. Five days per month on a sentence of more than three months but less than one year.~~
- ~~2. Six days per month on a sentence of one year or more but less than three years.~~
- ~~3. Seven days per month on a sentence of three years or more but less than five years.~~
- ~~4. Eight days per month on a sentence of five years or more but less than ten years.~~
- ~~5. Ten days per month on a sentence of ten years or more.~~

based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court ordered or staff recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. In addition to sentence reductions under ~~sections~~ section 12-54.1-01 and 12-54.1-02, offenders sentenced to the state penitentiary or ~~state farm~~ any of its affiliated facilities may be awarded, as provided by penitentiary rules and regulations upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such sentence reductions may be made only after a written recommendation is made by the warden, and approved by the director of ~~institutions~~ the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

SECTION 3. AMENDMENT. Section 12-54.1-04 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-04. Basis for meritorious conduct sentence reduction. Meritorious conduct sentence reductions may be awarded for any of the following performances or acts:

1. Exceptional quantity and quality of work far beyond normal expectations for the job assignment.
2. Beneficial suggestions resulting in substantial savings to the state.
3. Acts of outstanding heroism.
4. Acts which protect the lives of employees or other inmates or the property of the institution.

Meritorious conduct sentence reductions shall be awarded upon written recommendation of the warden and approved by the director of the department of corrections and rehabilitation on a lump-sum basis resulting from separate recommendations and approvals. Such reductions may not be awarded on a continuing days-per-month basis beyond the month in which a reduction award is made. Such sentence reductions may not be granted for any month in which good conduct the performance sentence reductions reduction under ~~sections~~ section 12-54.1-01 and 12-54.1-02 were was withheld or forfeited.

SECTION 4. REPEAL. Section 12-54.1-02 of the North Dakota Century Code is repealed.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 119

SENATE BILL NO. 2150

(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### **PROBATION OFFICER AS PEACE OFFICER**

AN ACT to create and enact a new section to chapter 12-59 of the North Dakota Century Code, relating to probation and parole officers having authority to enforce probation and parole laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-59 of the North Dakota Century Code is created and enacted as follows:

Probation and parole officers as peace officers. Probation and parole officers have the power of a peace officer for the purpose of enforcing probation and parole laws, and shall provide assistance to and receive assistance from other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling of criminal activity.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 120

SENATE BILL NO. 2190  
(Committee on Judiciary)  
(At the request of the Attorney General)

### **PEACE OFFICER CERTIFICATION REPEAL**

AN ACT to repeal sections 12-62-04 and 12-62-08 of the North Dakota Century Code, relating to certification and training of peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 12-62-04 and 12-62-08 of the North Dakota Century Code are repealed.

Approved March 11, 1991  
Filed March 11, 1991

# CRIMINAL CODE

## CHAPTER 121

SENATE BILL NO. 2430  
(Senators Maxson, Stenehjem)  
(Representatives Schneider, D. Olsen)

### CRIMINAL DEFENDANT PSYCHOLOGICAL REPORT

AN ACT to amend and reenact sections 12.1-04-06, 12.1-04-07, 12.1-04-08, and subsection 3 of section 25-04-05.1 of the North Dakota Century Code, relating to the temporary detention of a criminal defendant, psychiatric reports, suspension or dismissal of criminal proceedings, and transfer of developmentally disabled persons; and to repeal section 25-04-07 of the North Dakota Century Code, relating to developmentally disabled defendants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-06. Examination - Temporary commitment. Whenever there is reason to doubt the defendant's fitness to proceed, the court may order the defendant to undergo detention of the defendant for the purpose of an examination by a licensed psychiatrist and may order him committed to or a licensed psychologist. The detention must be in the least restrictive appropriate setting, including the state hospital, the developmental center at Grafton, or other suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu of detention, the court may allow the defendant to remain in the defendant's present residential setting or other suitable residential setting for the purpose of evaluation by a human service center or other suitable facility or personnel, subject to any reasonable limitation the court may impose. The court, by subsequent order and for good cause shown, may extend the period of commitment detention for a period not to exceed thirty additional days. While the defendant is committed detained, his the defendant's legal counsel, family, and others necessary to assist in his the defendant's case shall have reasonable opportunity to examine and confer with him the defendant.

SECTION 2. AMENDMENT. Section 12.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-07. Psychiatric report Report - Hearing when contested.

1. The report of the examining psychiatrists shall or psychologists must be given in writing to the court, who within three days of expiration of the period of commitment. The court shall cause copies to be delivered to the prosecutor and counsel for the defendant.

2. The report must include:

- a. The identity of the individuals interviewed and records and other information considered.
  - b. Procedures, tests, and techniques utilized in the assessment.
  - c. The date and time of the examination of the defendant, and the identity of each individual present during the examination.
  - d. The relevant information obtained, other information not obtained which the examiner believes may be relevant, and the findings made.
  - e. An opinion as to whether the defendant is fit to proceed or is unable to effectively communicate with counsel and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future.
3. If the findings of the report are contested, the court shall hold a hearing prior to deciding the issue whether the defendant currently lacks fitness to proceed or currently lacks ability to effectively communicate with counsel and whether the defendant will attain fitness to proceed or ability to effectively communicate with counsel in the foreseeable future. Upon hearing, the prosecution and defense shall have the right to summon and cross-examine the persons responsible for the report and to offer evidence upon the issues.

SECTION 3. AMENDMENT. Section 12.1-04-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-04-08. Suspension or dismissal of proceedings - ~~Commitment-Prosecution or dismissal~~ Referral for services.

1. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed or to effectively communicate with counsel but that the defendant may attain fitness to proceed or effectively communicate with counsel in the foreseeable future, the proceedings against him shall the defendant must be suspended, except as provided in section 12.1-04-09, and the court shall commit him to the custody of the superintendent of the state hospital or the state school. However, the defendant cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain fitness to proceed in the foreseeable future. Continued commitment of the defendant must be justified by progress toward fitness to proceed. The entire period of such commitment shall not exceed the maximum period for which the defendant could be sentenced and in no event shall exceed three years. When the court determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed or to effectively communicate with counsel, the proceeding shall must be resumed. If prosecution of the defendant has not resumed prior to the expiration of the maximum period for which the defendant could be committed sentenced, or it is obvious determined by the court, after a hearing if a hearing is requested, that the defendant will not regain fitness to proceed or to effectively communicate with counsel, the charges against him shall the defendant must be

- dismissed and the defendant shall be subject to laws governing civil commitment of persons suffering from mental disease or defect. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.
2. If the court determines based upon a preponderance of the evidence that the defendant currently lacks fitness to proceed and that the defendant will not attain fitness to proceed in the foreseeable future, the proceedings must be dismissed. The court may at any time make a referral for other appropriate services, treatment, or civil commitment.
  3. Other appropriate services or treatment include:
    - a. Determination of incapacity, by a county court with appropriate jurisdiction following petition by the state's attorney, for the appointment of a guardian or conservator pursuant to chapter 30.1-28 or 30.1-29;
    - b. Civil commitment of the person pursuant to chapter 25-03.1; or
    - c. Treatment of the person by a human service center or other appropriate public or private provider.
  4. The custodian, guardian, or other person charged with the control of the defendant may take an appeal from the court's order in the manner provided by law. The procedure provided in this section is not exclusive, but is in addition to any other procedure for the commitment of individuals to the developmental center at Grafton, state hospital, or other state facility.

SECTION 4. AMENDMENT. Subsection 3 of section 25-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The superintendent may authorize the temporary release of any resident to the custody of the resident's parent or guardian of the person, or to another person designated by the parent or such guardian. In the absence of such authorization any parent or guardian of the person of any resident may formally request, in writing, the resident's temporary release. The release must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a release is, or would be, effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent or such guardian in writing. ~~If in the opinion of the superintendent the health, safety, welfare, or morals of the resident or society are seriously endangered by release, the superintendent shall so advise the department of human services, which may thereupon apply to the proper county court to have such adult resident adjudged a defective delinquent in the manner provided in section 25-04-07, or in the case of a minor, the department of human services may apply to the proper juvenile court to have such minor declared a ward of the court.~~

\* SECTION 5. REPEAL. Section 25-04-07 of the North Dakota Century Code is repealed.

Approved April 3, 1991  
Filed April 4, 1991

\* NOTE: Section 25-04-07 was amended by section 7 of House Bill No. 1410, chapter 294.

## CHAPTER 122

HOUSE BILL NO. 1245  
(Representatives Henegar, Carlisle)  
(Senator Evanson)

### HARBORING RUNAWAY MINOR

AN ACT to create and enact a new section to chapter 12.1-08 of the North Dakota Century Code, relating to harboring a runaway minor; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-08 of the North Dakota Century Code is created and enacted as follows:

Harboring a runaway minor - Penalty. A person who willfully harbors a runaway minor with knowledge that the child is being sought by a law enforcement authority is guilty of a class A misdemeanor. This section does not apply to a person who provides temporary sanctuary, not exceeding seventy-two hours, to a runaway minor who is seeking refuge from a physically, sexually, or mentally abusive person. For the purposes of this section, a "runaway minor" is an unemancipated minor who is voluntarily absent from the minor's home without the consent of a minor's parent entitled to legal custody of the minor or legal guardian with the intention of evading the direction or control of the parent or guardian. This section does not apply to persons providing temporary sanctuary to minors accompanied by a parent or legal guardian in a domestic violence shelter or safe home.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 123

SENATE BILL NO. 2332  
(Senators Marks, Nelson, Krauter)  
(Representatives Gorder, Schindler, Huether)

### ASSISTING IN SUICIDE

AN ACT to prohibit the assisting of suicide and to provide for actions against any person assisting in the commission of a suicide; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Assisting the commission of suicide - Causing death by suicide - Penalties.

1. Any person who intentionally or knowingly aids, abets, facilitates, solicits, or incites another person to commit suicide, or who provides to, delivers to, procures for, or prescribes for another person any drug or instrument with knowledge that the other person intends to attempt to commit suicide with the drug or instrument is guilty of a class C felony.
2. Any person who, through deception, coercion, or duress, willfully causes the death of another person by suicide is guilty of a class AA felony.

SECTION 2. Injunctive relief.

1. A claim for relief for an injunction may be maintained against any person who has attempted or will attempt to violate subsection 1 of section 1 of this Act by any person who is entitled to inherit from the person who would commit suicide or who is the spouse, parent, child, sibling, or health care provider of such person.
2. Any public official with jurisdiction to prosecute or enforce the laws of this state may maintain a claim for relief for an injunction against any present or future violation or attempted violation of subsection 1 of section 1 of this Act.

SECTION 3. Construction. This Act does not preclude the use of medications or procedures necessary to relieve a person's pain or discomfort if the use of the medications or procedures is not intentionally or knowingly prescribed or administered to cause the death of that person. In addition, this Act does not preclude the withholding or withdrawal of life-prolonging treatment pursuant to state or federal law.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 124

SENATE BILL NO. 2440  
(Senators Holmberg, Traynor)  
(Representatives Scherber, Svedjan)

### SEXUAL OFFENDER REGISTRATION

AN ACT to provide for the registration of a sexual offender's address upon release from incarceration; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires.

1. "Department" means the department of corrections and rehabilitation.
2. "Sexual offender" means a person who has been convicted of a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11.

SECTION 2. Release of sexual offender from place of confinement - Duties of official in charge. A sexual offender who is released from the custody of the department or a correctional facility must be informed in writing prior to release of the offender's duty to register the address at which the offender expects to reside upon release. The official in charge of the place of confinement shall obtain the address and report the address to the department or the correctional facility. The department or correctional facility shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

SECTION 3. Duty to register. A sexual offender shall register, within fourteen days of coming into a county in which the offender resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the offender resides in an area other than a city.

SECTION 4. Change of address - Duty to inform. If a sexual offender required to register under this Act changes residence, the offender shall give written notification, within ten days, of the new address to the law enforcement agency with whom the offender last registered. The law enforcement agency, within three days after receipt of the information, shall forward the information to the department and the local law enforcement agency having jurisdiction over the new place of residence.

SECTION 5. Duration of registration. A sexual offender convicted of a violation of section 12.1-20-05 or 12.1-20-07 shall comply with the registration requirement for a period of five years after conviction if not imprisoned during that period. If a sexual offender convicted of a violation of section 12.1-20-05 or 12.1-20-07 was imprisoned during the initial five-year period, the offender shall comply with the registration requirement

for a period of five years after release from incarceration. All other sex offenders required to register under this Act shall comply with the registration requirement for a period of ten years after conviction if not imprisoned during that period. Unless otherwise provided for in this chapter, if a sexual offender required to register under this Act is imprisoned during the initial ten-year period, the offender shall comply with the registration requirement for a period of ten years after release from incarceration. Unless otherwise provided for in this chapter, a sexual offender's duty to register under this Act terminates upon the expiration of ten years from the date of initial registration unless, during the ten-year period, the sexual offender is again required to register under this Act.

**SECTION 6. Penalty.** A sexual offender who fails to register under this Act is guilty of a class A misdemeanor.

Approved April 2, 1991  
Filed April 4, 1991



## CHAPTER 125

HOUSE BILL NO. 1338  
(Representatives D. Olsen, Kolbo, A. Olson)  
(Senators Nalewaja, Nething, Tennefos)

### ANIMAL FACILITIES

AN ACT relating to damage or destruction of animal research facilities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Animal" means any living organism that is used in food, fur, or fiber production, agriculture, research, testing, or education. The term does not include a human being, plant, or bacteria.
2. "Animal facility" means any vehicle, building, structure, research facility, premises, or defined area where an animal is kept, handled, housed, exhibited, bred, or offered for sale.
3. "Deprive" means to:
  - a. Withhold an animal or other property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;
  - b. Restore the animal or property only upon payment of a reward or other compensation; or
  - c. Dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely.
4. "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:
  - a. Induced by force or threat;
  - b. Given by a person the offender knows is not legally authorized to act for the owner; or
  - c. Given by a person who by reason of age, mental disease or defect, or influence of drugs or alcohol is known by the offender to be unable to make a reasonable decision.
5. "Owner" means a person who has title to the property, possession of the property, or a greater right to possession of the property than the actor.

6. "Possession" means actual care, custody, control, or management.
7. "Research facility" means any place at which any scientific test, experiment, or investigation involving the use of any living animal is carried out, conducted, or attempted.

SECTION 2. Animal facility - Damage or destruction. No person without the effective consent of the owner may:

1. Intentionally damage or destroy an animal facility, an animal or property in or on the animal facility, or any enterprise conducted at the animal facility.
2. Acquire or otherwise exercise control over an animal facility or an animal or other property from an animal facility with the intent to deprive the owner and to damage the enterprise conducted at the facility.
3. Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section.
4. Enter an animal facility and remain concealed, with intent to commit an act prohibited by this section.
5. Enter an animal facility and commit or attempt to commit an act prohibited by this section.
6. Enter an animal facility and use or attempt to use a camera, video recorder, or any other video or audio recording equipment.
7. Intentionally turn out or release any animal in or on an animal facility.

This section does not apply to lawful activities of a governmental agency carrying out its duties under law.

SECTION 3. Entry forbidden - Notice. No person may without the effective consent of the owner, and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility, if the person had notice that the entry was forbidden or received notice to depart but failed to do so. Notice includes communication by the owner or someone with apparent authority to act for the owner, fencing or other enclosures designed to exclude intruders or to contain animals, or a sign posted on the property or at the entrance to the animal facility indicating that entry is forbidden.

SECTION 4. Penalty. A person who violates subsection 1 of section 2 is guilty of a class B felony if there is damage of ten thousand dollars or more, a class C felony if there is damage of at least five hundred dollars but less than ten thousand dollars, and a class A misdemeanor if there is damage of less than five hundred dollars. A person who violates subsections 2 through 5 or 7 of section 2 is guilty of a class C felony. A person who violates subsection 6 of section 2 is guilty of a class B misdemeanor.

SECTION 5. Civil action. A person who has been damaged by reason of violation of this Act may bring an action in the district court against the

person causing the damage to recover an amount equal to three times all actual and consequential damages, and court costs and reasonable attorney fees.

This Act does not affect any other rights of a person who has been damaged by reason of violation of this Act.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 126

SENATE BILL NO. 2433  
(Senators Marks, Wogsland)  
(Representatives Hanson, Williams, Henegar)

## POSTING OF LAND

AN ACT to amend and reenact subsection 3 of section 12.1-22-03 and section 20.1-01-17 of the North Dakota Century Code, relating to criminal trespass posting requirements and posting requirements to prohibit hunting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 3 of section 12.1-22-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A person is guilty of a class B misdemeanor if, knowing that ~~he~~ that person is not licensed or privileged to do so, ~~he that person~~ enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.

SECTION 2. AMENDMENT. Section 20.1-01-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-17. Posting of lands by owner or tenant to prohibit hunting - How posted - Signs defaced. Only the owner or tenant of any land may post it by placing signs alongside the public highway or the land giving notice that no hunting is permitted on the land. The name ~~and address~~ of the person posting the land ~~shall~~ must appear on each sign in legible characters. The signs ~~shall must~~ must be readable from the outside of the land and ~~shall must~~ must be placed conspicuously not more than eight hundred eighty yards [804.68 meters] apart. As to land entirely enclosed by a fence or other enclosure, posting of ~~such~~ signs at or on all gates through ~~such the~~ fence or enclosure ~~shall be construed to be constitutes~~ constitutes a posting of all ~~such the~~ enclosed land. No person ~~shall may~~ may in any manner deface, take down, or destroy posting signs.

Approved April 3, 1991  
Filed April 4, 1991

\* NOTE: Subsection 3 of section 12.1-22-03 was also amended by section 1 of House Bill No. 1034, chapter 127.

## CHAPTER 127

HOUSE BILL NO. 1034  
(Legislative Council)  
(Interim Game and Fish Committee)

### HUNTING ON POSTED LAND

AN ACT to amend and reenact subsections 3 and 4 of section 12.1-22-03 and sections 20.1-01-18 and 20.1-01-26 of the North Dakota Century Code, relating to the penalty for being on property and hunting on posted land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 3 and 4 of section 12.1-22-03 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A person is guilty of a class B misdemeanor if, knowing that he that person is not licensed or privileged to do so, he that person enters or remains in any place as to which notice against trespass is given by actual communication to the actor by the person in charge of the premises or other authorized person or by posting in a manner reasonably likely to come to the attention of intruders. A person who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.
4. A person is guilty of a class B misdemeanor if that person remains upon the property of another after being requested to leave the property by a duly authorized person. A person who violates this subsection is guilty of a class A misdemeanor for the second or subsequent offense within a two-year period.

SECTION 2. AMENDMENT. Section 20.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-18. Hunting on posted land and trapping on private land without permission unlawful - Penalty. No person ~~shall~~ may hunt or pursue game, or enter for those purposes, upon legally posted land belonging to another without first obtaining the permission of the person legally entitled to grant the same. No person ~~shall~~ may enter upon privately owned land for the purpose of trapping protected fur-bearing animals without first gaining the written permission of the owner or operator of ~~such~~ that land. A person who violates this section is guilty of a class B misdemeanor for the first offense and a class A misdemeanor for a subsequent offense within a two-year period.

\*\* SECTION 3. AMENDMENT. Section 20.1-01-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Subsection 3 of section 12.1-22-03 was also amended by section 1 of Senate Bill No. 2433, chapter 126.

\*\* NOTE: Section 20.1-01-26 was also amended by section 6 of Senate Bill No. 2050, chapter 231.

20.1-01-26. Suspension of hunting, trapping, or fishing privileges - Surrender and return of license. In addition to the penalty provided upon conviction under this title, the court may suspend the defendant's hunting, trapping, or fishing privileges for up to ~~two~~ three years. The court may not suspend the defendant's privileges for a noncriminal violation if the defendant has not been convicted for a violation of this title in the last three years. Upon conviction for a violation of section 20.1-01-18, the court shall suspend the defendant's hunting, fishing, and trapping privileges for a period of at least ~~six months~~ one year, two years for the second conviction, and three years for the third or subsequent conviction. At the time of the suspension, the court shall determine whether the defendant must successfully complete the hunter education course provided for in section 20.1-03-01.1, as prescribed by the proper state or provincial natural resources or wildlife management agency, before the defendant may purchase a new or obtain the return of a valid hunting license.

Upon imposition of ~~such~~ the suspension, the court shall take any hunting, trapping, or fishing license or permit held by the defendant and forward it, together with a certified copy of the suspension order, to the commissioner. Except as otherwise provided in this section, upon expiration of the suspension, the commissioner shall return the person's license or permit if it is still valid. No person may purchase, or attempt to purchase, a hunting, trapping, or fishing license or permit during a suspension period. If the court so ordered, no person who has had a hunting license suspended may purchase or attempt to purchase a hunting license nor may the commissioner return a valid hunting license until the person has successfully completed the course provided for in section 20.1-03-01.1 and as prescribed by the proper state or provincial natural resources or wildlife management agency. A certificate of completion for a similar course issued by any other state or province of Canada is sufficient to meet this requirement. The person shall file proof of that completion with the court.

For the purpose of this section, the term "conviction" includes an admission or adjudication of a noncriminal violation.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 128

HOUSE BILL NO. 1513  
(Representatives Wald, Wentz, Kerzman)  
(Senator Evanson)

### OBSCENITY ENHANCED PENALTIES

AN ACT to create and enact a new subsection to section 12.1-27.1-01 and a new section to chapter 12.1-27.2 of the North Dakota Century Code, relating to enhanced penalties for obscenity offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-27.1-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

- a. In addition to the penalty provided in subsection 1, 2, or 3, any person who violates subsection 1, 2, or 3 in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:

- (1) For an individual, a fine not to exceed ten thousand dollars; or
- (2) For a corporation, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.

- b. In addition to the penalty provided in subsection 1, 2, or 3, the court shall impose the following penalty upon the conviction of a person or entity described in subdivision a for a second or subsequent offense under subsection 1, 2, or 3:

- (1) For an individual, a fine not to exceed fifty thousand dollars; or
- (2) For a corporation, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

SECTION 2. A new section to chapter 12.1-27.2 of the North Dakota Century Code is created and enacted as follows:

Sexual performance by a minor - Enhanced penalties.

1. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or

for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty:

- a. For an individual, a fine not to exceed ten thousand dollars;  
or
  - b. For a corporation, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.
2. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter:
- a. For an individual, a fine not to exceed fifty thousand dollars;  
or
  - b. For a corporation, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 129

SENATE BILL NO. 2560  
(Maxson, Marks, Peterson)

**GAMBLING AND GAMING FINANCIAL STATEMENTS**

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to a requirement of a certified financial statement from certain charitable gaming organizations; to amend and reenact subsections 1 and 2 of section 12.1-28-02 of the North Dakota Century Code, relating to the penalty for illegal gambling; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 12.1-28-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. It ~~shall be~~ is an infraction to engage in gambling on private premises where the total amount wagered by an individual player exceeds twenty-five dollars per individual hand, game, or event.
2. It ~~shall be~~ is a class A misdemeanor to:
  - a. Sell, purchase, receive, or transfer a chance to participate in a lottery; ~~or~~
  - b. Disseminate information about a lottery with intent to encourage participation in it; or
  - c. Engage in gambling on private premises where the total amount wagered by an individual player exceeds five hundred dollars per individual hand, game, or event.

SECTION 2. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Financial statements. Every eligible organization receiving gaming gross proceeds of two hundred thousand dollars or more in the organization's annual accounting period shall file with the attorney general on or before the fifteenth day of the fifth month following the end of the accounting period a financial statement and a copy of the internal revenue service's form 990 titled return of organization exempt from income tax required to be filed under section 501(c) of the Internal Revenue Code. The financial statement must at least include a schedule of the sources of total revenue, total expenses, listing of the names of nongaming and gaming employees who received any form of compensation amounting to thirty thousand dollars or more during the accounting period, including specific sources of the compensation paid to each employee, and any information as required by the attorney general.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 130

HOUSE BILL NO. 1046  
(Legislative Council)  
(Interim Jobs Development Commission)

### SUNDAY BUSINESS OPENING

AN ACT to provide for the establishment of a North Dakota rural area development corporation to administer a rural development revolving loan fund; to create and enact a new section to chapter 12.1-30 and a new section to chapter 34-06 of the North Dakota Century Code, relating to business leases or agreements and an employee day of rest; to amend and reenact sections 12.1-30-01 and 12.1-30-02 of the North Dakota Century Code, relating to the conduct of business on Sundays; to provide a penalty; to provide a contingent appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 3 of this Act, unless the context otherwise requires:

1. "Board of directors" means the board of directors of the equity development corporation as established under chapter 10-30.3.
2. "Corporation" means the equity development corporation established under chapter 10-30.3.
3. "Primary sector business" means an individual, corporation, partnership, or association which through a process employing knowledge and labor adds value to a product or service produced for resale.
4. "Region" means the area delineated by executive order of the governor under section 54-40.1-02.
5. "Rural area" means any area in the state that is not within five miles [8.05 kilometers] of any city with a population of more than eight thousand.

SECTION 2. Economic development commission to act in advisory capacity. The economic development commission shall act in an advisory capacity to the board of directors of the equity development corporation for purposes of sections 1 through 3 of this Act, and shall:

1. Advise the board of directors regarding the regional rural revolving loan fund established by section 3 of this Act;
2. Establish guidelines for fund matching requirements, eligibility criteria, financing terms and conditions, solicitation and review

of applications for assistance, and determination of projects to be funded under section 3 of this Act;

3. Develop priorities for projects and activities relating to the development of rural areas; and
4. Coordinate the rural area development plans and programs of the various regions of the state and encourage the collocation of assistance programs for rural areas in each region.

**SECTION 3. Regional rural development revolving loan fund - Appropriation.** There is established in the Bank of North Dakota a regional rural development revolving loan fund to be administered by the board of directors. All moneys transferred to the regional rural development revolving loan fund, interest on moneys in the fund, and payments to the fund of principal and interest on loans made by the fund are hereby appropriated to the corporation for the purpose of providing technical assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanding primary sector businesses in rural areas. The funds available under this section must be allocated equally for the benefit of each region.

**SECTION 4. AMENDMENT.** Section 12.1-30-01 of the North Dakota Century Code is amended and reenacted 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 is a class B misdemeanor for any person between the hours of twelve midnight and twelve noon on Sunday to do any of the following activities:
  - a. Engage in or conduct business or labor for profit in the usual manner and location.
  - b. Operate a place of business open to the public.
  - c. Authorize or direct that person's employees or agents to take action prohibited under this section.
2. The prohibition in subsection 1 does not apply to a person who in good faith observes a day other than Sunday as the Sabbath, if that person refrains from engaging in or conducting business or labor for profit and closes the place of business to the public between the hours of twelve midnight and twelve noon on the day observed as the Sabbath.
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 5. AMENDMENT.** Section 12.1-30-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-30-02. Items prohibited from sale or rental on Sunday. 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 between the hours of twelve midnight and twelve noon on Sunday is prohibited:

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

Retail business leases or agreements - Penalty. A retail business may not be required to be open on Sunday as a part of a lease agreement, franchise agreement, or any other contractual arrangement. A violation of this section is a class A misdemeanor.

SECTION 7. A new section to chapter 34-06 of the North Dakota Century Code is created and enacted as follows:

One day of rest in seven - Penalty.

1. An employer may not require an employee to work seven consecutive days in a business that sells merchandise at retail. An employer may not deny an employee at least one period of twenty-four consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked. An employer shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the employer's business. However, if an employee requests time off to attend one regular worship service a week, an employer may not require the employee to work during that period unless:
  - a. Honoring the employee's request would cause the employer substantial economic burdens or would require the imposition of significant burdens on other employees required to work in place of the Sabbath observer; or
  - b. The employer has made a reasonable effort to accommodate the employee's request.
2. A violation of this section is a class B misdemeanor. It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and the employee executed a written statement so stating. The statement must also contain a provision, signed by the employer or the employer's agent, that the employer did not require such work.

SECTION 8. APPROPRIATION. There is hereby appropriated, subject to the availability of state general fund revenues as provided in section 9 of this Act, out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$9,500,000 which shall be transferred by the state treasurer to the regional rural development revolving loan fund to carry out the purposes of sections 1 through 3 of this Act, for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 9. CONTINGENT APPROPRIATION. The amount appropriated in section 8 of this Act is available only upon determination by the director of the office of management and budget that estimated general fund revenues for the biennium ending June 30, 1993, are greater than the estimates that were made at the close of the fifty-second legislative assembly. The director of the office of management and budget shall make estimates every six months during the biennium on or before June thirtieth and December thirty-first of each year. The amount that is appropriated under section 8 of this Act is limited to the amount in excess of \$11,000,000 over the amount estimated by the fifty-second legislative assembly, up to a total of \$9,500,000. If the balance in the general fund at the end of the biennium ending June 30, 1993, is \$11,000,000 or more above the estimate made by the fifty-second legislative assembly, the amount in excess of \$11,000,000, up to a total of \$9,500,000, is appropriated for the purposes of section 8 of this Act. The provisions of section 54-44.1-11 do not apply to any appropriation that is based upon the actual ending balance. For purposes of this section, the estimate at the close of the fifty-second legislative assembly may not include the tax revenues generated as a result of this Act. The director of the office of management and budget shall inform the equity development corporation of the appropriation available to it under this Act.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 6, 1991  
Filed February 6, 1991

## CHAPTER 131

HOUSE BILL NO. 1610  
(Representatives Martinson, Whalen, Timm)  
(Senators Bowman, Krebsbach, Maxson)  
(Approved by the Committee on Delayed Bills)

### SUNDAY BUSINESS OPENING APPLICATION

AN ACT to create and enact a new subsection to section 12.1-30-03 of the North Dakota Century Code and a new subsection to the new section to chapter 34-06 of the North Dakota Century Code as created by section 7 of House Bill No. 1046, as approved by the fifty-second legislative assembly, relating to businesses allowed to operate on Sunday; to amend and reenact subsections 32 and 33 of section 12.1-30-03 of the North Dakota Century Code, relating to businesses allowed to operate on Sunday and days of rest; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 32 and 33 of section 12.1-30-03 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

32. ~~From April first through June fifteenth, floral~~ Floral nurseries ~~for the sale of bedding plants and nursery stock.~~
33. ~~From November twentieth through December twenty fourth,~~ Christmas tree stands.

SECTION 2. A new subsection to section 12.1-30-03 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Credit approval services, lodging and travel reservation services, and, notwithstanding section 12.1-30-02, telemarketing of goods and services.

SECTION 3. A new subsection to the new section to chapter 34-06 of the North Dakota Century Code as created by section 7 of House Bill No. 1046, as approved by the fifty-second legislative assembly, is created and enacted as follows:

This section applies only to an employer in a business that sells merchandise at retail.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 132

HOUSE BILL NO. 1133  
(Committee on Judiciary)  
(At the request of the Attorney General)

### CHEMICAL VAPOR INHALATION

AN ACT to prohibit the inhalation of vapors of certain volatile chemicals; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty. A person is guilty of a class B misdemeanor if that person intentionally inhales the vapors of a volatile chemical in a manner designed to affect the person's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the person's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in chapter 19-03.1. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butyl nitrite.
5. Carbon tetrachloride.
6. Chlorinated hydrocarbons.
7. Chlorofluorocarbons.
8. Chloroform.
9. Cyclohexane.
10. Diethyl ether.
11. Ethyl acetate.
12. Glycol ether inter solvent.
13. Glycol ether solvent.
14. Hexane.



15. Ketone solvent.
16. Methanol.
17. Methyl cellosolve acetate.
18. Methyl ethyl ketone.
19. Methyl isobutyl ketone.
20. Petroleum distillate.
21. Toluene.
22. Trichloroethane.
23. Trichloroethylene.
24. Xylo| or xylene.

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

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 133

SENATE BILL NO. 2548  
(Senators Goetz, Robinson)  
(Representatives Ritter, Wald)

### CRIMINAL REWARD REPAYMENT

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to repayment of rewards by convicted offenders; and to amend and reenact subsection 2 of section 54-12-14 and section 62.1-05-01 of the North Dakota Century Code, relating to repayment of rewards from the forfeiture of assets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Repayment of rewards paid by crimestoppers programs - Duties of attorney general - Qualified local programs - Disbursement of moneys collected.

1. After a defendant has been convicted of a felony, the court may order the defendant to repay all or part of any reward paid by a qualified local program. In determining whether the defendant must repay the reward or part of the reward, the court shall consider:
  - a. The ability of the defendant to make the payments, including any financial hardship that payment may cause to the defendant's dependents.
  - b. Whether the information that was reported to the qualified local program substantially contributed to the defendant being charged with the offense. To the extent allowed by law, the court shall respect the confidentiality of the records of the qualified local program.
2. "A qualified local program" means a program approved by the attorney general to receive repayment of rewards. The attorney general shall consider the organization, continuity, leadership, community support, and general conduct of the program to determine whether the repayments will be spent to further crime prevention purposes of the program. The attorney general also shall determine that the qualified local program provides rewards to persons who report information concerning criminal activity and whether that information substantially leads to defendants being charged with felonies.
3. If the court determines that a defendant is capable of repaying all or any part of a reward paid by a qualified local program, the judgment must include a statement of the amount owed, the identity

of the qualified local program, and a schedule, if any, of payments to be made by the defendant. The clerk of court may establish an account within which to deposit repayments of rewards and at least quarterly shall pay over to each qualified local program the sums that have been collected for the benefit of that program.

4. A judgment that includes a repayment of reward, either alone or in conjunction with section 29-26-22, may be docketed and thereafter constitutes a lien upon the real estate of the defendant in the same manner as a judgment for money rendered in a civil action.

\* SECTION 2. AMENDMENT. Subsection 2 of section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

2. For repayment of rewards to qualified local programs approved under section 1 of this Act, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, awards rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.

SECTION 3. AMENDMENT. Section 62.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty - Forfeiture. No person may purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872].

Any federal licensee who purchases, sells, has, or possesses a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases or any other federally licensed firearm or dangerous weapon those items for the licensee's protection or for sale must forward a copy of the licensee's federal license along with the required weapons transfer form to the licensee's local county sheriff and to the chief of the bureau of criminal investigation within five days of the receipt of those forms.

A person who violates this section is guilty of a class C felony. Upon arrest of that person the firearm or dangerous weapon must be seized and upon conviction of the person and motion, to the court in which the conviction occurred, the firearm or dangerous weapon must be forfeited to the jurisdiction in which the arrest was made and the. The firearm or dangerous weapon may be, pursuant to court order, sold at public auction, retained for use, or destroyed pursuant to the court's order. If a qualified local program as defined under section 1 of this Act has paid a reward for information that resulted in forfeiture of the item and the item has been sold, the jurisdiction shall after payment of expenses for forfeiture and sale repay the qualified local program for the reward that it has paid.

Approved April 3, 1991  
Filed April 4, 1991

- \* NOTE: Section 54-12-14 was also amended by section 1 of House Bill No. 1156, chapter 581, and by section 9 of Senate Bill No. 2073, chapter 600.

## CHAPTER 134

SENATE BILL NO. 2186  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### PROBATION SUPERVISION COSTS

AN ACT to create and enact a new subdivision to subsection 3 of section 12.1-32-07 of the North Dakota Century Code, relating to the financial obligations involved when paying a probation supervision cost; and to amend and reenact subsection 1 of section 12.1-32-07 of the North Dakota Century Code, relating to the supervision and management of a probationer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the pardon board department of corrections and rehabilitation. In all other cases, the court may place the defendant under the supervision and management of the pardon board department of corrections and rehabilitation or other responsible party selected by the court.

SECTION 2. A new subdivision to subsection 3 of section 12.1-32-07 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Pay a probation supervision cost, if doing so will not materially interfere with other financial obligations.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 135

SENATE BILL NO. 2137  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### PROBATIONER RECORDS AND CONTROL

AN ACT to amend and reenact subsection 1 of section 12.1-32-07.2 and section 12.1-32-07.3 of the North Dakota Century Code, relating to the records and filing of papers of a person placed on probation and when a probationer is deemed an escapee or fugitive.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-07.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the clerk of the pardon board director of parole and probation of the department of corrections and rehabilitation. Upon the disposition of any criminal case, the clerk of court shall transmit to the pardon board department of corrections and rehabilitation statistical data, in accordance with rules adopted by the board department, regarding all defendants whether found guilty or discharged.

SECTION 2. AMENDMENT. Section 12.1-32-07.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.3. When probationer deemed escapee and fugitive from justice. A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the pardon board department of corrections and rehabilitation.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 136

SENATE BILL NO. 2574  
(Robinson, Graba, Freborg, Thane)  
(Approved by the Committee on Delayed Bills)

### OFFENSE AGAINST CHILDREN REGISTRATION

AN ACT relating to the registration of persons convicted of offenses against children; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Crimes against children - Registration requirement - Penalty.

1. As used in this section, "a crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, 12.1-27.2, or 12.1-29 in which the victim is a minor or is otherwise of the age required for the act to be a crime.
2. After a person has been convicted of a crime against a child or an attempted crime against a child, the court may impose, in addition to any other penalty provided by law, a requirement that the person register, within thirty days of coming into a county in which the person resides or is temporarily domiciled, with the chief of police of the city or the sheriff of the county if the person resides in an area other than a city. The court may not require a person to register unless the court states this fact on the court records.
3. If the court has imposed a requirement for registration under this section, the official in charge of a facility or institution where the person required to register is confined shall, before the discharge, parole, or release of that person, inform the person of the duty to register pursuant to this section. The official shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register has been explained to that person. The official in charge of the place of confinement shall obtain the address where the person expects to reside upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement shall give one copy of the form to the person and shall send four copies to the attorney general no later than forty-five days before the scheduled release of that person. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release, one copy to the prosecutor who prosecuted the person, and one copy to the court in which the person was prosecuted. All forms must be transmitted and received by the law enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the person.

4. A person who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of that person's duty to register under this section by the court in which that person is convicted. The court shall require the person to read and sign a form as required by the attorney general, stating that the duty of the person to register under this section has been explained to that person. The court shall obtain the address where the person expects to reside upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the person and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole, or release.
5. Registration consists of a written statement signed by the person, giving the information required by the attorney general, and the fingerprints and photograph of the person. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a person required to register pursuant to this section has a change in address, that person shall inform in writing, within ten days, the law enforcement agency with whom that person last registered of the person's new address. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence.
6. A person required to register under this section shall comply with the registration requirement for a period of ten years after conviction or after release from incarceration, whichever is later, except that for violations of section 12.1-17-01, 12.1-17-02, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-18-03, 12.1-20-05, or 12.1-20-07, the person shall comply with the registration requirement for a period of five years after conviction or after release from incarceration, whichever is later.
7. A person required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve a person who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year.
8. When a person is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the parole or probation of the person revoked. The statements, photographs, and fingerprints required by this section are not open to inspection by the public or by any person other than a regularly employed law enforcement officer.
9. If a person required to register pursuant to this section is temporarily sent outside the facility or institution where that person is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that

person is being sent must be notified within a reasonable time period before that person is released from the facility or institution. This subsection does not apply to any person temporarily released under guard from the facility or institution in which that person is confined.

Approved April 5, 1991  
Filed April 8, 1991



# DEBTOR AND CREDITOR RELATIONSHIP

## CHAPTER 137

HOUSE BILL NO. 1536  
(Representatives Bateman, DeWitz, Meyer)  
(Senators Kelsh, Marks)

### MARSHALING FUNDS

AN ACT to amend and reenact section 13-01-04 of the North Dakota Century Code, relating to the rights of creditors and marshaling funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-01-04 of the North Dakota Century Code is amended and reenacted as follows:

13-01-04. Marshaling funds - Rights of creditors. When a creditor is entitled to resort to each of several funds for the satisfaction of ~~his~~ the creditor's claim and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons. This section does not apply to execution sales of real estate mortgage foreclosures.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 138

HOUSE BILL NO. 1565  
(Larson)

### LATE PAYMENT CHARGE DISCLOSURE

AN ACT to amend and reenact section 13-01-15 of the North Dakota Century Code, relating to statements to be furnished by a creditor before imposing late payment charges on accounts receivable.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-01-15 of the North Dakota Century Code is amended and reenacted as follows:

13-01-15. Periodic statement to be furnished to debtor. A creditor may charge the late payment charge provided for in section 13-01-14 only if ~~he~~ the creditor promptly supplies the debtor with a statement as of the end of each monthly period, or other regular period agreed upon by the creditor and the debtor, in which there is any unpaid balance. Such statement shall recite the following:

1. The percentage amount of the late payment charge which will be charged beginning thirty days after the obligation is incurred.
2. The unpaid balance at the end of the period.
3. An identification of any amount debited to the debtor's account during the period.
4. The payments made by the debtor to the creditor during the period.
5. The amount of the late payment charge.
- ~~6. A legend to the effect that the debtor may at any time pay the total unpaid balance.~~

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the debtor.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 139

SENATE BILL NO. 2406  
(Senators Krebsbach, Langley)  
(Representatives Martinson, Whalen)

### INSURANCE IN CONNECTION WITH LOANS

AN ACT to amend and reenact subsections 1 and 3 of section 13-03.1-17 of the North Dakota Century Code, relating to insurance, insurance policies, and existing insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 13-03.1-17 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The following types of insurance may be written in connection with loans made by licensees under this chapter, however, nothing in this chapter limits the right of a licensee and a borrower to enter into a transaction involving the purchase of insurance or other products by the borrower from or through the licensee if the purchase is voluntary on the part of the borrower, is not a condition to the making of the loan, and if the insurance purchase is related to and written in connection with the making of a loan under this chapter:
  - a. In the case of motor vehicles having a book value of more than five hundred dollars, fire, theft, and windstorm, and fifty dollars or more deductible collision; and in the case of all motor vehicles, bodily injury liability and property damage liability. If neither liability or property damage insurance is written, but other insurance is written covering a motor vehicle, the borrower shall sign the following statement: "This contract does not provide for motor vehicle liability and property insurance".
  - b. Fire and extended coverage insurance upon property.
  - c. Life (on one or more borrowers) and accident and health insurance or any of them may be written, upon or in connection with, any loan in any amount not exceeding the total amount to be repaid under the loan contract, and for a term not extending beyond the final maturity date of the loan contract; provided, that in the event of a renewal or prepayment of a contract or loan, this type of insurance must be canceled and a refund of the unearned premium must be credited or paid the borrower.
3. The insurance premium for ~~such any~~ insurance related to and written in connection with the making of a loan under this chapter may be collected from the borrower or included in the loan contract at the

time the loan is made. No insurance premiums or charges, other than for credit life and accident and health insurance, may be included in a loan contract having a maturity of more than thirty-six months and fifteen days unless no charges are computed on such premiums or charges. Any insurance related to and written in connection with the making of a loan under this chapter may not exceed the term of the loan or any extensions of the term.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 140

HOUSE BILL NO. 1155  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking  
and Financial Institutions)

### COLLECTION AGENCY BRANCH OFFICES

AN ACT to create and enact a new section to chapter 13-05 of the North Dakota Century Code, relating to collection agency branch offices; and to amend and reenact section 13-05-04 of the North Dakota Century Code, relating to an annual fee for collection agency branch offices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

Branch offices. A collection agency licensed under this chapter is permitted to operate and maintain branch offices provided the collection agency license was issued in a North Dakota location. Branch offices are permitted without limitations or restrictions as to number or geographic location. The commissioner may grant approval for each branch office which must be submitted by an application. When used in this chapter, "branch office" means a location other than the location where the collection agency license was granted and where a collection agency collects or receives payments within a building site.

SECTION 2. AMENDMENT. Section 13-05-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-05-04. Fee and bond to accompany application for collection agency license. The application for a collection agency license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of making such application, the applicant shall include payment in the sum of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of two hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty thousand dollars. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

Approved March 19, 1991  
Filed March 19, 1991

# DOMESTIC RELATIONS AND PERSONS

## CHAPTER 141

HOUSE BILL NO. 1579  
(Representatives Boehm, Belter, Kerzman)  
(Senators O. Hanson, Kelsh, Marks)

### ABORTION INFORMED CONSENT

AN ACT to create and enact two new subsections to section 14-02.1-02 and three new sections to chapter 14-02.1 of the North Dakota Century Code, relating to requirement of informed consent for abortions and civil damages for performance of abortions without informed consent; and to amend and reenact subsection 5 of section 14-02.1-02 and subsection 1 of section 14-02.1-03 of the North Dakota Century Code, relating to informed consent for abortions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed ~~only after full disclosure to her by the physician who is to perform the abortion of as much of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:~~
  - a. ~~According to the best judgment of her attending physician; she is pregnant.~~
  - b. ~~The number of weeks elapsed from the probable time of the conception of her unborn child; based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.~~
  - c. ~~The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.~~
  - d. ~~The immediate and long-term physical dangers of abortion; psychological trauma resulting from abortion; sterility and increases in the incidence of premature births; tubal pregnancies and stillbirths in subsequent pregnancies; as compared to the dangers in carrying the pregnancy to term.~~
  - e. ~~The particular risks associated with her own pregnancy and the abortion technique to be performed.~~
  - f. ~~Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the~~

woman so requests; a list of the agencies and the services available from each.

- g- In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb; the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition; the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which; in the exercise of his best medical judgment; is reasonably necessary to allow the woman to give her informed consent to the proposed abortion; with full knowledge of its nature and consequences.

Informed consent shall be evidenced by a written statement; in the form prescribed by the state department of health and consolidated laboratories and approved by the attorney general; signed by the physician and the woman upon whom the abortion is to be performed; in which statement the physician certifies that he has made the full disclosure provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death; provided that:

- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
- (1) The name of the physician who will perform the abortion;
  - (2) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
  - (3) The probable gestational age of the unborn child at the time the abortion is to be performed; and
  - (4) The medical risks associated with carrying her child to term.
- b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
- (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

- (2) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
- (3) That she has the right to review the printed materials described in section 3 of this Act. The physician or the physician's agent shall orally inform the woman the materials have been provided by the state of North Dakota and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view the materials, copies of them must be furnished to her. The physician and the physician's agent may disassociate themselves from the materials and may comment or refrain from comment on them, as they choose.
- c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her, and that she has been informed of her opportunity to review the information referred to in paragraph 3 of subdivision b.
- d. Prior to the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.

SECTION 2. Two new subsections to section 14-02.1-02 of the North Dakota Century Code are created and enacted as follows:

"Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four hour delay will create grave peril of immediate and irreversible loss of major bodily function.

"Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

SECTION 3. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Printed information.

1. The state department of health and consolidated laboratories shall cause to be published in English, and in every other language that the department determines is the primary language of a significant number of state residents, within one hundred eighty days after this Act becomes law, the following easily comprehensible printed materials:
- a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must



include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, twenty-four hour a day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.

- b. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

2. The materials required under this section must be available at no cost from the state department of health and consolidated laboratories upon request and in appropriate number to any person, facility, or hospital.

SECTION 4. AMENDMENT. Subsection 1 of section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. No physician shall perform an abortion unless prior to such performance the physician certified in writing that the woman gave her informed consent fully and without coercion, after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion as defined and provided in section 14-02.1-02 and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion shall be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor requesting the abortion has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the performance of abortion or unless the attending physician certifies in writing that he has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last known addresses at least forty-eight hours prior to the minor's consent to the performance of abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply to the sole remaining parent. When both parents have died or where the rights and interests of both parents have been legally terminated, this subsection shall apply to the guardian or other person standing in loco parentis. Notification by the attending physician is not required if the minor elects not to allow the notification of one or both parents or her guardian and the abortion is authorized by the juvenile court in accordance with section 14-02.1-03.1. None of the requirements of this subsection apply in the case of a medical emergency, except that

when a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or for which a twenty-four hour delay will create grave peril of immediate and irreversible loss of major bodily function, and shall certify those indications in writing.

SECTION 5. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Civil damages for performance of abortions without informed consent. Any person upon whom an abortion has been performed without informed consent as required by this Act may maintain an action against the person who performed the abortion for ten thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with this Act may maintain an action against the person who attempted to perform the abortion for five thousand dollars in punitive damages and treble whatever actual damages the plaintiff may have sustained.

SECTION 6. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Privacy of woman upon whom an abortion is performed or attempted. In every proceeding or action brought under section 5 of this Act, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted should be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Approved April 1, 1991  
Filed April 2, 1991

## CHAPTER 142

SENATE BILL NO. 2498  
(Senators Kelly, Mushik, Ingstad)  
(Representatives Dorso, Martinson, DeMers)

**EMPLOYMENT DISCRIMINATION**

AN ACT to amend and reenact section 14-02.4-01, subsection 3 of section 14-02.4-02, sections 14-02.4-03, 14-02.4-06, 14-02.4-08, 14-02.4-09, 14-02.4-18, and 34-14-02 of the North Dakota Century Code, relating to discriminatory employment practices and direct deposit of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-01. State policy against discrimination. It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, ~~or~~ status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination, or coerce others to discriminate.

SECTION 2. AMENDMENT. Subsection 3 of section 14-02.4-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, ~~or~~ status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining

employment, public accommodations or public services, education, or housing;

- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing;
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

SECTION 3. AMENDMENT. Section 14-02.4-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, ~~or~~ status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least twenty-seven thousand dollars.

SECTION 4. AMENDMENT. Section 14-02.4-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-06. Certain employment advertising deemed discriminatory. It is a discriminatory practice for an employer, employment agency, or labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of a particular race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or who participate in lawful activity off the employer's premises during nonworking hours are unwelcome, objectionable, not acceptable, or not solicited.

SECTION 5. AMENDMENT. Section 14-02.4-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-08. Qualification based on religion, sex, national origin, physical or mental handicap, or marital status. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position, or for an employment agency to fail or refuse to refer an individual for employment in a position, or for a labor organization to fail or refuse to refer an individual for employment, on the basis of religion, sex, national origin, physical or mental handicap, or marital status in those circumstances where religion, sex, national origin, physical or mental handicap, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; nor is it a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, or to discharge an individual from a position on the basis of that individual's participation in a lawful activity that is off the employer's premises and that takes place during nonworking hours if that participation is contrary to a bona fide occupational qualification that reasonably and rationally relates to employment activities and the responsibilities of a particular employee or group of employees, rather than to all employees of that employer.

SECTION 6. AMENDMENT. Section 14-02.4-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-09. Seniority, merit, or other measuring systems and ability tests not discriminatory. Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations provided that the differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours; or for an employer to give and to act upon the results of any professionally developed ability test; provided, that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance, or participation in a lawful activity off the employer's premises during nonworking hours.

SECTION 7. Section 14-02.4-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-18. Concealing, aiding, compelling, or inducing unlawful discrimination - Threats or reprisals. It is a discriminatory practice for a person to conceal unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of trick, artifice, advertisement, or sign, or by the use of a form of application, or the making of a record or inquiry, or by use of a device whatever to bring about or facilitate discrimination, or to engage in or threaten to engage in a reprisal, economic or otherwise, against a person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purpose and provisions of this chapter because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with

respect to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours.

SECTION 8. AMENDMENT. Section 34-14-02 of the North Dakota Century Code is amended and reenacted as follows:

34-14-02. Semimonthly or agreed payday - Direct deposit. Every employer shall pay all wages due to his employees at least twice each calendar month, or on regular agreed paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convenient to the place of employment. If an employee participates in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 143

HOUSE BILL NO. 1127  
(Committee on Industry, Business and Labor)  
(At the request of the Labor Commissioner)

### EMPLOYMENT DISCRIMINATION

AN ACT to amend and reenact subsections 1, 4, and 5 of section 14-02.4-02 of the North Dakota Century Code, relating to the application of age and other employment discrimination restrictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 4, and 5 of section 14-02.4-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means ~~over the age of at least forty and under the years of age of seventy.~~
4. "Employee" means a person who performs services for an employer, who employs ~~ten~~ one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
5. "Employer" means a person within the state who employs ~~ten~~ one or more ~~full-time~~ employees for more than one quarter of the year, and a person wherever situated who employs ~~ten~~ one or more employees whose services are to be partially or wholly performed in the state.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 144

HOUSE BILL NO. 1472  
(Clayburgh)

### **DISCRIMINATING EMPLOYMENT PRACTICE COMPLAINTS**

AN ACT to amend and reenact sections 14-02.4-19 and 14-02.4-21 of the North Dakota Century Code, relating to claims of discriminatory employment practices adjudicated by the department of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to housing or public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained housing or public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

SECTION 2. AMENDMENT. Section 14-02.4-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals. The department of labor may receive complaints of discriminating employment practices under this chapter and shall have sixty days to negotiate settlements to the extent acceptable to the parties involved. If the commissioner of labor or the commissioner's representative determines the claim of discriminating employment practices is valid, the commissioner may prohibit the employer from engaging in the discriminating employment practice and order appropriate relief such as an injunction, equitable relief, or backpay. Earnings or potential earned income by the employee who was the object of the discrimination will reduce the backpay granted. A party may appeal a decision of the commissioner to the district court in the district in which the complaining employee was employed at the time of the alleged discriminatory practice. This chapter does not prohibit or require a person to file a complaint with the department of labor with regard to alleged discriminating employment practices before using the provisions of this chapter.

Approved April 2, 1991  
Filed April 4, 1991



## CHAPTER 145

HOUSE BILL NO. 1073  
(Representative Schimke)  
(Senator Moore)

### MARRIAGE LICENSES

AN ACT to amend and reenact sections 14-03-10 and 14-03-19 of the North Dakota Century Code, relating to requirements for the issuance of marriage licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-10 of the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license — ~~Residence required.~~ No person shall solemnize any marriage until the parties ~~thereto shall to the marriage~~ produce a license regularly issued not more than sixty days prior to the date of ~~such the~~ marriage by ~~the a~~ county judge of the county in which either of the contracting parties or the parents of either of the parties resides or is temporarily domiciled, or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or ~~if the contracting parties are residents of another state by the a~~ county judge of the county wherein the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein ~~he~~ that person is stationed.

SECTION 2. AMENDMENT. Section 14-03-19 of the North Dakota Century Code is amended and reenacted as follows:

14-03-19. License issued to all who comply with law. If a county judge is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, ~~or in the case where both of the contracting parties are residents of another state, if such parties present a valid marriage license regularly issued not more than sixty days prior thereto by the duly authorized officials of their state,~~ then the county judge shall issue and sign a marriage license in duplicate and affix ~~his~~ the judge's seal to both the original and the duplicate.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 146

SENATE BILL NO. 2340  
(Senator Dotzenrod)  
(Representative Huether)

### MARRIAGE LICENSE APPLICATIONS

AN ACT to amend and reenact section 14-03-17 of the North Dakota Century Code, relating to the requirements for a marriage license application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-17. Application for license. When application is made to any county judge of this state for a marriage license, ~~he~~ the judge shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. ~~He~~ The judge may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county judge by affidavit. The county judge also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:

1. An affidavit ~~of some disinterested, credible person by each of the applicants showing that the female and male are each is over the age of eighteen years. In addition, each applicant shall exhibit to the county judge a birth certificate or other satisfactory evidence of age. If the female or the male either applicant is under the age of eighteen years, the county judge shall require the consent of the parents or guardian, if any, to be given personally, or by a certificate of consent signed by parents or guardian under oath; and sworn to before a notary public or other officer qualified by law to administer oaths~~ the written consent under oath of:
  - a. Either parent of the minor applicant, if the parents are living together; or
  - b. The parent having the legal custody of the minor applicant, if the parents are not living together; or
  - c. The surviving parent, if one of the parents of the minor applicant is deceased; or
  - d. The guardian, or person under whose care and government the minor applicant is, if both parents of the minor applicant are deceased, or if a person other than a parent has legal and actual custody of the minor applicant.

2. An affidavit showing whether or not either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application; ~~and if either or both parties are subject to a subsisting order to provide child support or alimony combined with child support pursuant to the provisions of a divorce decree or judgment; the county judge shall cause a copy of the application for license to be filed in such prior divorce action and shall secure from the applicants a signed acknowledgment of any provision for child support or alimony combined with child support contained in such prior divorce decree or judgment.~~ A license shall not be issued if it contravenes any provisions of the decree of divorce.
- 3- ~~An affidavit of a disinterested, credible person that the applicants are not habitual criminals.~~

All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county judge shall retain on file in ~~his~~ the judge's office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section shall be punished as provided in section 14-03-28.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 147

SENATE BILL NO. 2274  
(Stenehjem)

### RESIDENCY FOR DIVORCE

AN ACT to amend and reenact sections 14-05-17 and 14-06-06 of the North Dakota Century Code, relating to residency requirements for the granting of divorce and separation decrees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-05-17. Residence requirements. A divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding ~~the~~ commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of divorce.

SECTION 2. AMENDMENT. Section 14-06-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-06-06. Residence requirements. A decree of separation may not be granted unless the plaintiff in good faith has been a resident of this state for six months next preceding ~~the~~ commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a decree of separation may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 148

SENATE BILL NO. 2355  
(Senators Yockim, Mathern, Lindgren)  
(Representatives Rydell, Clayburgh, Scherber)

### EVIDENCE IN CUSTODY DECISIONS

AN ACT to amend and reenact subsection 3 of section 14-05-22 and subdivision j of subsection 1 of section 14-09-06.2 of the North Dakota Century Code, relating to the consideration of evidence of domestic violence by courts in determining rights to custody and visitation of children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 14-05-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence ~~and, if~~. If the court finds credible evidence that domestic violence has occurred, this evidence shall create the rebuttable presumption that awarding custody or granting visitation to the abusive party is not in the best interests of the child. The court shall furthermore give direction for the custody of children of the marriage and grant rights of visitation in a manner that best protects the children and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this section, "domestic violence" means domestic violence as defined in section 14-07.1-01. The court also shall consider the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent, and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

SECTION 2. AMENDMENT. Subdivision j of subsection 1 of section 14-09-06.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. The existence of domestic violence. If the court finds that domestic violence has occurred, the court shall provide for a custody arrangement that cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 149

SENATE BILL NO. 2447  
(Senators Mushik, Stenehjem)  
(Representatives Carlson, Gates)

### DOMESTIC VIOLENCE PROCEDURES

AN ACT to amend and reenact subsection 2 of section 14-07.1-01, section 14-07.1-02, subsection 2 of section 14-07.1-03, and subsection 2 of section 14-07.1-10 of the North Dakota Century Code, relating to definitions, issuance of domestic violence protection orders, and arrest procedures in situations involving domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 14-07.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, not committed in self-defense, on the complaining family or household members.

SECTION 2. AMENDMENT. Section 14-07.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court or county court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

- a. Restraining any party from threatening, molesting, ~~or~~ injuring, or having contact with any other person.
  - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
  - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
  - d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
  - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
  - f. Awarding temporary use of personal property, including motor vehicles, to either party.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
- ~~6-~~ 7. No order or agreement under this section affects title to any real property in any matter.

SECTION 3. AMENDMENT. Subsection 2 of section 14-07.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An ex parte temporary protection order may include:
  - a. Restraining any party from having contact with or committing acts of domestic violence on another person.
  - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of

another person, or from a domestic violence shelter care facility.

- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.

SECTION 4. AMENDMENT. Subsection 2 of section 14-07.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately, including the comparative severity of injuries involved, to determine whether to seek an arrest warrant.

Approved April 5, 1991  
Filed April 8, 1991



## CHAPTER 150

SENATE BILL NO. 2270  
(Stenehjem, Maxson)

### RESIDENCE OF CHILD AFTER DIVORCE

AN ACT to amend and reenact section 14-09-07 of the North Dakota Century Code, relating to an exemption to the requirement of a court order to change the residence of a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-07 of the North Dakota Century Code is amended and reenacted as follows:

14-09-07. Residence of child. A parent entitled to the custody of a child ~~shall~~ may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, ~~where~~ if the noncustodial parent has been given visitation rights by the decree; ~~however, a.~~ A court order ~~shall~~ is not ~~be~~ required if the noncustodial parent (1) has not exercised ~~such~~ visitation rights for a period of one year or (2) has moved to another state and is more than fifty miles from the residence of the custodial parent.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 151

SENATE BILL NO. 2269  
(Stenehjem)

### CHILD SUPPORT AFFIDAVIT SERVICE

AN ACT to amend and reenact section 14-09-08.2 of the North Dakota Century Code, relating to support for children after majority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.2. ~~Modification of support~~ Support for children after majority.

1. In the absence of a written agreement to the contrary entered into after July 1, 1989, a judgment or order requiring the payment of child support until the child attains majority ~~is deemed to be modified to continue~~ continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
  - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
  - b. The child resides with the person to whom the duty of support is owed.
2. The person to whom the duty of support is owed shall file an affidavit with the district court stating that the child has been continuously enrolled in high school and is, or will be, eighteen years of age prior to the date the child is expected to be graduated. The clerk of court shall serve the affidavit ~~must be served by the person to whom the duty of support is owed by first-class mail~~ upon the person owing the duty of support. Upon the filing of the affidavit, ~~the judgment or order is deemed modified~~ the child support continues pursuant to subsection 1, unless the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing on the need to modify the judgment or order before the district court.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 152

SENATE BILL NO. 2203  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### CHILD SUPPORT OBLIGATIONS

AN ACT to create and enact three new sections to chapter 14-09 of the North Dakota Century Code, relating to representation in child support matters; to amend and reenact sections 14-09-08.4, 14-09-09.12, 14-09-09.13, 14-09-09.16, 14-09-09.17, 14-09-09.24, subsection 3 of section 14-09-09.25, section 14-12.1-12, subsection 3 of section 14-12.1-18, sections 14-12.1-24, 14-12.1-27, and 14-12.1-38 of the North Dakota Century Code, and section 16 of chapter 148 of the 1989 Session Laws of North Dakota, relating to the establishment and enforcement of child support obligations; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16 of chapter 148 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Periodic review of child support orders.

1. The public authority shall establish standards to determine that a child support order being enforced by the child support agency should be reviewed. If required to do so in order to secure approval by federal officials charged with administration of title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended], the public authority shall make those standards a part of a plan indicating how and when child support orders are to be periodically reviewed and adjusted.
2. If the child support agency determines, at the request of the obligor or the obligee, or on its own motion, that, pursuant to the standards described in subsection 1, a child support order being enforced by the child support agency should be reviewed, the child support agency shall initiate a review of such order. The child support agency may seek an amendment of the order if the order is inconsistent with the amount that would be required by child support guidelines established under subsection 1 of section 14-09-09.7 and, if the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by child support those guidelines established under subsection 1 of section 14-09-09.7, shall seek an amendment of the order. The
3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment,

the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

4. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances.

SECTION 2. AMENDMENT. Section 14-09-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-08.4. Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency ~~not no~~ less frequently than thirty-six months after the establishment of the order or the most recent review of the order unless:
  - a. In the case of an order with respect to which there is in effect an assignment under sections 50-09-06 or 50-09-06.1, subsection 2 of section 50-24.1-02, or section 50-24.1-02.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
  - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by the child support those guidelines established under subsection 1 of section 14-09-09.7, the child support agency shall seek an amendment to of the order. The
3. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application

of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.

4. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances.

SECTION 3. AMENDMENT. Section 14-09-09.12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.12. Provision of notice of impact of income withholding law to obligors. Each judgment or order issued by a court in this state which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this chapter.

SECTION 4. AMENDMENT. Section 14-09-09.13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, or if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must be sent within five working days of the appropriate date under subsection 7 if the obligor's address is known to the clerk on that date or, if the address is unknown on that date, within five working days after the clerk is informed of the obligor's address. The notice must state:

1. That the obligor is delinquent in the payment of child support or, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payor from the obligor's income in each month and that the amount is the sum of both of the following:
  - a. The obligor's current monthly support obligation.
  - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an

amount equal to twenty percent of the obligor's current monthly support obligation, if any, or equal to the most recent monthly support obligation if there is no current monthly support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16.

4. That the income payor may withhold an additional sum of three dollars to cover the income payor's expenses.
5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. The date the income of the obligor is subject to income withholding, which is the earliest of:
  - a. The date the obligor requests income withholding.
  - b. The date on which an approved income withholding request is made by the obligee.
  - c. The date the child support obligation becomes delinquent.

SECTION 5. AMENDMENT. Section 14-09-09.16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.16. Service of income withholding order on income payor. The clerk of court shall serve the income withholding order and a copy of this chapter on the income payor in the manner provided for service of a summons in a civil action and upon the obligor by first-class mail to the obligor's last known address, within fifteen days of the date of the notice made pursuant to section 14-09-09.13 or 14-09-09.20, unless the obligor has contested that notice within ten days of the date of that notice. If a hearing was held under section 14-09-09.14 or 14-09-09.21, the income withholding order and the copy of this chapter must be served within fifteen five working days of the date of the court's determination. The income withholding order must be sent no later than forty five days following the notice given pursuant to section 14-09-09.13 or 14-09-09.20. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order and a copy of this chapter must be served on any known income payor within five working days of the issuance of the judgment or order which requires the payment of child support. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order and a copy of this chapter must be served on any subsequently identified income payor within five working days after the clerk is informed of the name and address of such an income payor. An income withholding order may also be issued and served at the request of the obligor. The income withholding order shall state all of the following:

1. That the obligor is delinquent in the payment of support or a request for withholding has been made by the obligee and approved by the child support agency; as the case may be; properly subject

to an income withholding order and that the income payor is therefore required to withhold a stated sum an amount, determined under subsection 3 of section 14-09-09.13, from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten working days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

2. That the income payor may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
3. That the amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payor, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.
4. That the income payor shall begin withholding no later than the first pay period that occurs fourteen days after service of the income withholding order.
5. That if the income payor is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income the income payor shall withhold the maximum amount permitted, and transmit to the clerk of court that portion thereof which the obligee's claim bears to the combined total of all claims.
6. That the income payor shall notify the clerk of court in writing of the termination of a duty to pay income to the obligor within fifteen days of such termination. Such notification must include the name and address of the obligor's subsequent income payor, if known.
7. That if the income payor is subject to income withholding orders for more than one obligor, the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the same clerk of court with identification of the amount attributable to each obligor.
8. That failure to comply with the income withholding order will subject the income payor to penalties provided under section 14-09-09.3.
9. That the withholding order has priority over any other legal process under state law against the same wages.
10. If appropriate, that the obligor is required to provide health insurance coverage for a child who is the subject of a child support order.

SECTION 6. AMENDMENT. Section 14-09-09.17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment or termination of an income withholding order, the clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order ~~is to may~~ be terminated only when the:

1. The duty to support ceases and all child support arrearages have been paid; or
2. In the case of an order imposed under section 14-09-09.24, the obligor requests termination, withholding has not been terminated previously and subsequently initiated, and the obligor meets the conditions for an alternative arrangement for assuring the regular payment of child support required by subsection 4 of section 14-09-09.24.

SECTION 7. AMENDMENT. Section 14-09-09.24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-09.24. Immediate income withholding.

1. Except as provided in subsection 2, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.
3. A finding that there is good cause not to require immediate income withholding must be based on at least:
  - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
  - b. Proof of timely payment of previously ordered support; and
  - c. Requirement that the obligor keep the clerk informed of the name and address of each of the obligor's current and future income payors and of any employment-related health insurance to which the obligor has access.
4. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:



- a. Provides that the obligor shall keep the clerk informed of the name and address of each of the obligor's current and future income payors and of any employment-related health insurance to which the obligor has access.
- b. Describes the provisions by which regular payment of child support is assured; and
- c. Is reviewed and approved by the court and entered into the court's records.

SECTION 8. AMENDMENT. Subsection 3 of section 14-09-09.25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination. Each approved request must be transmitted promptly to the clerk of court.

SECTION 9. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

State is real party in interest. The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted under section 14-09-08.9 or 14-09-08.13.
3. Whenever a support order of another state is received with the documentation required by subsection 2 of section 14-09-09.19.
4. Whenever duties are imposed on the state or its public officials under chapter 14-12.1.

SECTION 10. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Attorney represents people's interest in the enforcement of child support obligations. In any action brought to establish paternity, secure repayment of governmental benefits paid, secure current or future support of children, or establish, enforce, or modify a child support obligation, the public authority or a child support agency may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the people of the state of North Dakota in the enforcement of child support obligations. Nothing in this section may be construed to modify confidentiality required of the public authority or a child support agency. Representation by the employed or contracted attorney may not be

construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the people of the state of North Dakota, regardless of the name in which the action is brought.

SECTION 11. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Application to existing cases. Sections 9, 10, 12, 13, and 16 of this Act apply to actions filed prior to the effective date of this Act.

SECTION 12. AMENDMENT. Section 14-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-12. Officials to represent obligee people of the state of North Dakota. If this state is acting as an initiating state, the prosecuting attorney upon the request of the court, the executive director of the department of human services, a county commissioner, or the director of a county social service board, shall represent the obligee people of the state of North Dakota, and the people's interest in the enforcement of child support obligations, in any proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 13. AMENDMENT. Subsection 3 of section 14-12.1-18 of the North Dakota Century Code is amended and reenacted as follows:

3. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 14. AMENDMENT. Section 14-12.1-24 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-24. Order of support. If the responding court finds a duty of support it may shall order the obligor to furnish support or reimbursement therefor in accordance with the present needs and circumstances of the obligee and the present ability of the obligor to pay provisions of section 14-09-09.7 and may subject the property of the obligor to the order. The court, upon a finding of a material change in of circumstances relative to the obligor's discharge of obligations under any existing order for child support or decree of divorce, may modify the order for child support or alimony combined with child support, and order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1 or chapter 50-09 or 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that

proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

SECTION 15. AMENDMENT. Section 14-12.1-27 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-27. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may shall adjourn the hearing until the paternity issue has been adjudicated under chapter 14-17.

SECTION 16. AMENDMENT. Section 14-12.1-38 of the North Dakota Century Code is amended and reenacted as follows:

14-12.1-38. Official to represent obligee people of the state of North Dakota. If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, the executive director of the department of human services, a county commissioner, or the director of a county social service board shall represent the obligee people of the state of North Dakota, and the people's interest in the enforcement of child support obligations, in proceedings under this part. If the prosecuting attorney neglects or refuses to represent the obligee people, the attorney general may undertake the representation.

SECTION 17. CONTINGENT EFFECTIVE DATE. Section 6 of this Act becomes effective upon adoption, as a final regulation, of the provisions of 45 CFR 303.100(a)(7)(ii), proposed for adoption in a notice of proposed rulemaking published in the Federal Register on Wednesday, August 15, 1990, at 55 F.R. 33426, but otherwise does not become effective; provided, however, that section 6 of this Act will in no event become effective before August 1, 1991.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 153

HOUSE BILL NO. 1475  
(Representatives Pyle, Kretschmar, Rydell)  
(Senators Satrom, Marks)

### ADOPTION RECORD DISCLOSURE

AN ACT to amend and reenact section 14-15-16 of the North Dakota Century Code, relating to disclosure of adoption records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-15-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation. Notwithstanding any other law concerning public hearings and records:

1. All hearings held in proceedings under this chapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.
2. All papers, records, and information pertaining to the adoption whether part of the permanent record of the court or of a file in the department of human services or in an agency are confidential and may be disclosed only in accordance with this section.
3. Nonidentifying information, if known, concerning undisclosed genetic parents shall be furnished to:
  - a. The adoptive parents at the time of adoptive placement or upon their request.
  - b. An adopted adult upon written request.

In addition, the clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted person prior to the adoption proceedings.

4. At the discretion of the child-placing agency, with due regard for confidentiality and upon the consent of all the parties involved, exchanges may take place between the genetic parents, adoptive parents, and adopted child as follows:

- a. At the time the child is placed for adoption, the genetic parents and the adoptive parents may meet, in person, without disclosing their names.
  - b. The genetic parents and the adoptive parents may exchange correspondence through the child-placing agency.
  - c. The child-placing agency may inform the genetic parents of the death of the child they placed for adoption.
  - d. The child-placing agency may inform the adopted adult, or the adoptive parents of a minor of the death of a genetic parent.
  - e. The child-placing agency may inform the genetic parents of pertinent medical information concerning the adopted child or adult.
  - f. The child-placing agency may inform the adopted adult or the adoptive parents of a minor of pertinent medical information concerning the genetic parents.
5. An adopted person who is eighteen years of age or over may request the department of human services to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child-placing agency. Similarly, a genetic parent may request the same information about the child that parent placed for adoption who is twenty-one years or older. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested ~~of the request~~ by the adopted ~~child person or the genetic parent~~. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.
- 5- 6. Within three months after receiving notice of the request of the adopted person or genetic parent, the child-placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted ~~child~~ person or to notify the person placed for adoption by the genetic parents. The child-placing agency may charge a reasonable fee to the adopted ~~child~~ person or the genetic parent for the cost of making a search pursuant to this subsection. All communications under this subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the genetic parents of the adopted ~~child~~ person or with the person placed for adoption by the genetic parents; the personal and confidential contact shall not be by mail and shall be by an employee or agent of the licensed child-placing

agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency; the personal and confidential contact shall be evidenced by filing with the department of human services an affidavit of notification executed by the person who notified each genetic parent or the adopted person and certifying that each genetic parent or the adopted person was given the following information:

- a. The nature of the identifying information to which the agency has access.
- b. The nature of any nonidentifying information requested.
- c. The date of the request of the adopted ~~child~~ person or genetic parent.
- d. The right of the genetic parent or the adopted person to file, within sixty days of receipt of the notice, an affidavit with the department of human services stating that the identifying information as it relates to the person filing the affidavit should not be disclosed.
- e. The right of the genetic parent or the adopted person to file a consent to disclosure with the department of human services at any time.
- f. The effect of a failure of the genetic parent or the adopted person to file either a consent to disclosure or an affidavit stating that the identifying information should not be disclosed.

~~6-~~ 7. If the child-placing agency certifies to the department of human services that it has been unable to notify the genetic parent or the adopted person within three months, the identifying information shall not be disclosed to the adopted ~~child~~ person or the genetic parent. If the child-placing agency certifies to the department of human services that the agency has been able to locate only one genetic parent who consents to disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted person. The information disclosed by the agency or by the consenting parent may relate only to that consenting parent. If ~~either~~ a genetic parent or the adopted person has at any time filed with the department of human services an unrevoked affidavit stating that the identifying information should not be disclosed, the department of human services shall not disclose the information identifying that genetic parent or adopted person to the adopted ~~child~~ person or that genetic parent until the affidavit is revoked by the filing of a consent to disclosure by that parent or the adopted person.

~~7-~~ 8. If, within three months, the child-placing agency certifies to the department of human services that it has notified the genetic parents or the adopted person pursuant to subsection 5 6, the department of human services shall receive the identifying information from the child-placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent or to the adopted person. This disclosure

will occur if, at any time during the sixty-one days, the genetic parent or the adopted person has filed an affidavit with the department of human services stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent or adopted person of an affidavit that the information shall not be disclosed.

- ~~8-~~ 9. If the genetic parent or the adopted person has died and has not filed an unrevoked affidavit with the department of human services stating that identifying information shall not be disclosed, the information shall be forwarded to and released by the department of human services to the adopted ~~child~~ person or the genetic parent. If the genetic parent or the adopted person has died, and at any time prior to his death the genetic parent or adopted person has filed an unrevoked affidavit with the department of human services stating that the identifying information shall not be disclosed, the adopted ~~child~~ person or the genetic parent may petition the court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.
- 9- 10. Any adopted person eighteen or more years of age or over whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4 5. An adult sibling may request the same information about a sibling who was placed for adoption who is twenty-one years of age or over. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, may be released only upon written consent of the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.
- ~~10-~~ 11. Upon application to the department of human services by an adult adopted person or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted person's eligibility for enrollment as a member of an Indian tribe.
- a. The department of human services may inquire of any person or agency, including a licensed child-placing agency in North Dakota to assist in the investigation.
  - b. All identifying information obtained by the department of human services shall remain confidential.
  - c. The bureau of Indian affairs may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted person for enrollment in an Indian tribe. Prior to the department's release of information to the bureau of Indian affairs, the department will obtain written assurance from the bureau of Indian affairs that the

- information provided will remain confidential, and will not be furnished to any unauthorized person or agency.
- d. The procedure used in contacting the genetic parents of the adopted child shall be a personal and confidential contact. Any necessary contact shall be made by an employee or agent of a licensed child-placing agency or the department of human services. The information requested of the genetic parents shall be limited to that information necessary to make a determination of the adopted person's eligibility for enrollment in an Indian tribe.
  - e. The department of human services may charge a reasonable investigation fee.
- ~~11-~~ 12. No person may be required to disclose the name or identity of either an adoptive parent or an adopted ~~child~~ person except:
- a. In accordance with this section;
  - b. As authorized in writing by the adoptive parent or the adopted ~~child~~ person;
  - c. Upon order of the court for good cause shown in exceptional cases.
- ~~12-~~ 13. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~13-~~ 14. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
- ~~14-~~ 15. The department of human services shall make such reasonable rules and regulations as are necessary to carry out the purposes of this section.

Approved April 8, 1991  
Filed April 8, 1991



# EDUCATION

## CHAPTER 154

HOUSE BILL NO. 1080  
(Representatives Kretschmar, Freier)  
(Senator Naaden)

### UNIVERSITY AND SCHOOL LANDS PROPERTY EXCHANGE

AN ACT to authorize the board of university and school lands to exchange certain property in Emmons County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Property exchange. The board of university and school lands may exchange the following property in Emmons County for real property substantially similar in value:

The southeast one quarter of the southwest one quarter of section sixteen, township one hundred thirty north, range seventy-eight west.

The conveyance authorized by this Act is not subject to section 54-01-05.5.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 155

SENATE BILL NO. 2080  
(Lips)

### **BISMARCK STATE COLLEGE PROPERTY EXCHANGE**

AN ACT to authorize the state board of higher education to exchange certain state-owned land at Bismarck state college for certain property owned by the Theodore Roosevelt Medora foundation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Exchange of land by the state board of higher education and the Medora foundation authorized.

1. The state board of higher education may exchange title to the property described in this subsection for title to the property described in subsection 2 which is owned by the Theodore Roosevelt Medora foundation:
  - a. Lot two, block two, Schafer heights addition, Bismarck, North Dakota, containing one hundred fifty-eight thousand eight hundred seventy square feet, more or less.
  - b. All that part of lot A of auditor's lot thirty, section thirty-two, township one hundred thirty-nine north, range eighty west of the fifth principal meridian, Bismarck, North Dakota, that lies west of lot two, block two, Schafer heights addition, Bismarck, North Dakota, and east of the east line of the west fifty-one and eighty hundredths feet of lot F of auditor's lot thirty extended south to the north line of Edwards avenue. This tract contains twenty-six thousand nine hundred forty-one square feet, more or less.
2. The property described in this subsection and owned by the Theodore Roosevelt Medora foundation may be accepted by the state board of higher education in exchange for the property described in subsection 1:
  - a. Lot D, lot E, and the west fifty-one and eighty hundredths feet of lot F of auditor's lot thirty, section thirty-two, township one hundred thirty-nine north, range eighty west of the fifth principal meridian, Bismarck, North Dakota, containing one hundred ten thousand seven hundred forty square feet, more or less.
  - b. Lot S and the west one hundred eight and twenty-eight hundredths of feet of lot T of auditor's lot thirty, section thirty-two, township one hundred thirty-nine north, range eighty west of the fifth principal meridian, Bismarck, North

Dakota, containing seventy-five thousand sixty-nine square feet, more or less.

3. The exchange authorized by this Act is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
4. All legal documents required for the exchange authorized by this Act, including title opinions, must be reviewed as to form and legality by the attorney general.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 156

SENATE BILL NO. 2535  
(Holmberg, Stenehjem)

### **HIGHER EDUCATION FRATERNITY PROPERTY SALE**

AN ACT authorizing the state board of higher education to convey certain real property in Grand Forks, North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. The state board of higher education is authorized to convey the real property described in this section for the price and on the terms as determined by the state board of higher education. The property to be conveyed is known as the Lambda Chi Alpha Fraternity House and the land upon which it is situated is described as lots C and D of the Replat of Lots 1,2,3 and the South half of Lots 5,6,7,8, and 9 in Block eight, University Place addition to the city of Grand Forks, North Dakota. The provisions of sections 54-01-05.1 and 54-01-05.5 do not apply to the transfer authorized by this Act.

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

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 157

HOUSE BILL NO. 1154  
(Committee on Agriculture)  
(At the request of the Board of University and School Lands)

### UNIVERSITY AND SCHOOL LAND TIMBER CUTTING

AN ACT to amend and reenact section 15-04-20 of the North Dakota Century Code, relating to permits to cut timber on land under control of the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-04-20 of the North Dakota Century Code is amended and reenacted as follows:

15-04-20. Permits to cut hay and to remove timber. When in its judgment ~~it is for~~ the best interests of the state will be served, the board of university and school lands may sell the right to cut grass or standing timber or both on any of the lands mentioned in this chapter and may sell any down and dead timber on the lands for such price and upon such terms and conditions as it ~~may think~~ deems proper. ~~No dead timber, if standing, shall be included in the sale unless expressly specified in the permit. Standing timber may only be sold under a management plan developed by the board of university and school lands after consultation with a committee composed of the state forester, the game and fish commissioner, and the commissioner of university and school lands.~~ All permits shall be for the current season only, which shall be between the fifteenth day of June fifteenth and the first day of April first of the following year. No control or right of occupancy of the land shall be other than that specified in the permit. All permits shall be paid for in advance.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 158

SENATE BILL NO. 2496  
(Senators Meyer, Langley)  
(Representative Flaagan)

### PERMANENT IMPROVEMENTS ON SCHOOL LANDS

AN ACT to amend and reenact section 15-08-26 of the North Dakota Century Code, relating to the removal of or payment for improvements on school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-08-26 of the North Dakota Century Code is amended and reenacted as follows:

15-08-26. Removal of or payment for improvements upon termination of lease. The lessee or purchaser of any lands under the control of the board of university and school lands, within one hundred twenty days after the expiration date or cancellation date of a lease or contract may remove any nonpermanent improvements which he has placed upon such lands by the lessee if such removal can be accomplished without material damage to the land. ~~If the land is leased or sold to any person other than the holder of the lease, the person purchasing or leasing the land.~~ Permanent improvements may not be placed on the land without written consent of the commissioner of university and school lands. A lessee requesting a permit to place permanent improvements on the land must complete an application form prepared by the commissioner. If a lessee desires payment for any approved permanent improvements, the commissioner shall determine the cost and may require the lessee to submit all documentation deemed necessary by the commissioner. The cost may not include any reimbursements to the lessee and may be depreciated over a period not to exceed ten years. The next lessee or purchaser, in addition to paying the purchase price or rental of the land, shall pay to the prior preceding lessee the reasonable value of all permanent improvements placed upon the land by the prior lessee with the written consent of the commissioner of university and school lands. If the new lessee or purchaser and the prior lessee cannot agree as to the reasonable value of the improvements the commissioner shall determine the reasonable value by appraisal and require the new lessee or purchaser to pay such value to the prior lessee. The new lessee or purchaser and the prior lessee shall be jointly and severally liable for the costs of such appraisal undepreciated cost.

In computing the reasonable value of such improvements, due regard shall be given to the cost of acquisition or construction and depreciation over a period of not to exceed ten years. Permanent improvements placed on the property without permission of the commissioner shall be deemed the property of the state. For purposes of this section, permanent improvements include such things as buildings, wells, dams, waterholes, waterlines, and trees and nonpermanent improvements include such things as fences, corrals, water tanks, and feed bunks.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 159

HOUSE BILL NO. 1431  
 (Representatives Gilmore, DeMers, Schneider)  
 (Senators Redlin, O'Connell, Krebsbach)

### BOARD OF HIGHER EDUCATION FACULTY REPRESENTATIVE

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-10-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-02. Membership of state board of higher education - ~~Qualifications of members - Advisory student representative - How appointed representatives.~~ The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state who shall have resided in this state for five years immediately preceding their respective appointments. The members of the board shall be appointed by the governor and confirmed by the senate. Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by the unanimous action of the president of the North Dakota education association, the chief justice of the supreme court, and the superintendent of public instruction. There shall not be on said board at any one time more than one graduate of any one of the institutions under the jurisdiction of the board. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the board for a period of two years following the termination of his employment. In addition to the regular board members, a nonvoting advisory representative from the North Dakota student association and one from the council of college faculties may attend and provide input at all board meetings. ~~The~~ Each year the North Dakota student association executive board shall submit to the state board of higher education a list of no fewer than three nor more than four student names, each from a different institution of higher learning, to fill this advisory position. The state board of higher education shall make the appointment from this list select one member to serve as its representative for a term of one year. The student advisory representative must be a resident of North Dakota and be a full-time student in good academic standing. ~~The term of the student advisory representative shall be one year, and the position shall not be filled by students attending the same institution for longer than two consecutive years. Transfer students and graduate students who either transfer or graduate from one institution and attend another may be nominated so as to represent either the institution they are presently attending or the one to which they plan to transfer or enroll. The student advisory representative shall be selected by the board at either its April, May, or June meetings. The council of college faculties shall each year select one member to serve as its representative. The student advisory representative shall and the council of college faculties representative are entitled to receive necessary expenses for travel.~~

Approved April 8, 1991  
 Filed April 8, 1991

\* NOTE: Section 15-10-02 was also amended by section 1 of Senate Bill No. 2559, chapter 160.

## CHAPTER 160

SENATE BILL NO. 2559  
(Senators Nalewaja, Heinrich)  
(Representatives Carlson, Bernstein)

### BOARD OF HIGHER EDUCATION STUDENT MEMBER

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to the membership of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-10-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-02. Membership of state board of higher education - Qualifications of members - Advisory student representative - How appointed. The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state who shall have resided in this state for five years immediately preceding their respective appointments. The members of the board shall be appointed by the governor and confirmed by the senate. Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by the unanimous action of the president of the North Dakota education association, the chief justice of the supreme court, and the superintendent of public instruction. There shall not be on said board at any one time more than one graduate of any one of the institutions under the jurisdiction of the board. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the board for a period of two years following the termination of his employment. In addition to the regular board members, a nonvoting advisory representative from the North Dakota student association may attend and provide input at all board meetings. The Each year, the North Dakota student association executive board shall submit to the state board of higher education a list of no fewer than three nor more than four student names, each from a different institution of higher learning, to fill this advisory position. The state board of higher education shall make the appointment from this list select one member to serve as its representative for a term of one year. The student advisory representative must be a resident of North Dakota and be a full-time student in good academic standing. The term of the student advisory representative shall be one year, and the position shall not be filled by students attending the same institution for longer than two consecutive years. Transfer students and graduate students who either transfer or graduate from one institution and attend another may be nominated so as to represent either the institution they are presently attending or the one to which they plan to transfer or enroll. The student advisory representative shall be selected by the board at either its April, May, or June meetings. The student advisory representative shall is entitled to receive necessary expenses for travel.

Approved April 5, 1991

Filed April 8, 1991

\* NOTE: Section 15-10-02 was also amended by section 1 of House Bill No. 1431, chapter 159.



## CHAPTER 161

HOUSE BILL NO. 1293  
(Representatives Aarsvold, Schindler, Oban)  
(Senators Lindaas, Vosper)

### VETERAN'S DEPENDENT FOR TUITION PURPOSES

AN ACT to amend and reenact subsection 1 of section 15-10-18.2 of the North Dakota Century Code, relating to the definition of dependents of certain veterans for purposes of receiving free tuition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-10-18.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Dependent" for purposes of section 15-10-18.3 means any child, spouse, widow, or widower of a resident veteran, as "veteran" is defined in section 37-01-40, who was killed in action or died from wounds or other service-connected causes, was totally disabled as a result of service-connected causes, died from service-connected disabilities, was a prisoner of war, or was declared missing in action.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 162

SENATE BILL NO. 2581

(Moore)

(Approved by the Committee on Delayed Bills)

### HIGHER EDUCATION COURSES AND OBJECTS

AN ACT to repeal sections 15-10-21, 15-10-22, 15-11-04, 15-11-06, 15-12-02, 15-13-02, 15-13-03, 15-15-02, and 15-16-02 of the North Dakota Century Code, relating to objects and courses of instruction at the institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 15-10-21, 15-10-22, 15-11-04, 15-11-06, 15-12-02, 15-13-02, 15-13-03, 15-15-02, and 15-16-02 of the North Dakota Century Code are repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 163

SENATE BILL NO. 2524  
(Senators Stenehjem, Nalewaja, Maxson)  
(Representatives Kretschmar, Wentz)

### **POLITICAL ADVERTISING AT STUDENT HOUSING**

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to political advertising at institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Political advertising - Student housing. A state institution of higher education may not include in student housing leases provisions that prohibit lessees from placing political advertisements on the leased property. A political advertising sign placed on student housing property must be placed in compliance with any applicable city ordinance relating to signs.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 164

SENATE BILL NO. 2584  
(Peterson)

(Approved by the Committee on Delayed Bills)

### CORRESPONDENCE COURSES

AN ACT to amend and reenact section 15-19-01 of the North Dakota Century Code, section 15-19-01 of the North Dakota Century Code as amended by section 1 of chapter 198 of the 1989 Session Laws of North Dakota, and sections 15-19-04 and 15-19-08 of the North Dakota Century Code, relating to correspondence courses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-19-01 of the North Dakota Century Code is amended and reenacted as follows:

15-19-01. ~~High school correspondence~~ Correspondence courses - Establishment - Enrollment of pupils - Courses of instruction. The state shall provide correspondence courses through the division of independent study under the following provisions:

1. A complete ~~high school~~ curriculum by correspondence which has been specifically determined by the state board of public school education as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, shall be maintained upon the campus of one of the state institutions of higher education by the state board of public school education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, all pupils under the age of sixteen taking advantage of the provisions of this chapter shall be required to attend their local district schools and to study their correspondence lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at such place as may be designated by the state director in accordance with the rules of the state board of public school education. If in attendance at a local school pupils shall be supplied with desk space in their respective school without charge, and they shall attend school regularly, and shall be under the same disciplinary supervision of the teachers as the other school pupils.
3. The ~~high school~~ correspondence work shall be completed in accordance with the rules and regulations established by the state board of public school education.

4. Correspondence pupils shall pay for books and materials used by them, postage required to mail reports to the division, and such other fees as may be prescribed by the board of public school education.

SECTION 2. AMENDMENT. Section 15-19-01 of the North Dakota Century Code, as amended by section 1 of chapter 198 of the 1989 Session Laws of North Dakota, is amended and reenacted as follows:

15-19-01. ~~High school correspondence~~ Correspondence courses - Establishment - Enrollment of pupils - Courses of instruction. The state shall provide correspondence courses through the division of independent study under the following provisions:

1. A complete ~~high school~~ curriculum by correspondence which has been specifically determined by the state board of public school education as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education by the state board of public school education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection 5 of this section all pupils under the age of sixteen taking advantage of the provisions of this chapter must be required to attend their local district schools and to study their correspondence lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at a place designated by the state director in accordance with the rules of the state board of public school education. If in attendance at a local school pupils must be supplied with desk space in their respective school without charge, and they shall attend school regularly, and be under the same disciplinary supervision of the teachers as the other school pupils.
3. The ~~high school~~ correspondence work must be completed in accordance with the rules established by the state board of public school education.
4. Correspondence pupils shall pay for books and materials used by them, postage required to mail reports to the division, and other fees as may be prescribed by the board of public school education.
5. Pupils exempt from the compulsory school attendance laws pursuant to subsection 5 of section 15-34.1-03 may enroll in correspondence courses offered through the division of independent study. These students may study their correspondence lessons in their learning environment under the supervision of a parent. The tests for the correspondence study must be administered by a certified teacher employed either by the public school district in which the parent resides or a state-approved private or parochial school.

SECTION 3. AMENDMENT. Section 15-19-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-19-04. Duty of teachers, county and state officers, and institutions. The state board of public school education and the superintendent or a member of the department of public instruction designated by the superintendent shall approve the content of courses offered, requirements for certification of teachers, credits granted for each course, and all other things necessary to integrate the correspondence program into other ~~high school~~ programs administered or supervised by the department of public instruction. The division of independent study may advertise its correspondence program, however, the state board of public school education and the superintendent of public instruction shall ensure that the program shall in no way compete with the public schools of this state for the enrollment of students, encourage students to leave the public schools, or duplicate the facilities of the public schools through offering ~~high school~~ correspondence courses to students having access to such courses in the public schools.

SECTION 4. AMENDMENT. Section 15-19-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-19-08. ~~High school correspondence~~ Correspondence work. The amount of money appropriated by the legislative assembly for correspondence work for a biennium, or so much thereof as may be necessary, must be expended first for ~~high school~~ work by correspondence.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 165

HOUSE BILL NO. 1209  
 (Committee on Education)  
 (At the request of the Board for Vocational Education)

### AREA VOCATIONAL AND TECHNOLOGY CENTERS

AN ACT to amend and reenact sections 15-20.2-01, 15-20.2-02, 15-20.2-03, 15-20.2-04, 15-20.2-05, 15-20.2-07, 15-20.2-08, 15-20.2-09, 15-20.2-10, 15-20.2-11, 15-20.2-12, 15-20.2-13, 15-20.2-14, 15-20.2-15; 15-20.2-16, subsection 1 of section 15-47-38.1, and subsection 3 of section 52-09-08 of the North Dakota Century Code, relating to multidistrict vocational education centers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-01. Multidistrict Area centers - Definition of terms. In this chapter, unless the context otherwise requires:

1. "Center board" means the governing board of ~~a multidistrict an area~~ vocational ~~education and technology~~ center.
2. "~~Multidistrict Area~~ vocational ~~education and technology~~ center" means a program of vocational education conducted at one or more attendance centers by three or more participating public school districts.
3. "Participating district" means a public school district whose students are attending an area vocational and technology center.
4. "School board" means a participating public school district board.
- ~~4~~ 5. "State board" means the state board of vocational education.

SECTION 2. AMENDMENT. Section 15-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-02. Submission of plan for multidistrict area center - Approval by state board. The school boards of three or more school districts may submit to the state board a proposed plan to establish ~~a multidistrict an area~~ vocational ~~education and technology~~ center. Such proposal shall be consistent with the state plan for vocational education and meet the requirements, rules, standards, and procedures as adopted by the state board. The state board upon receipt of a proposed plan to establish ~~a multidistrict an area~~ vocational ~~education and technology~~ center shall examine such plan and receive testimony for the purpose of examining supporting and nonsupporting evidence submitted therewith. The state board shall process the proposed plan according to procedures consistent with the state plan.

Nothing in this chapter shall be interpreted to prohibit school districts from entering into other kinds of administrative structures for vocational centers approved by the state board pursuant to other provisions of law.

SECTION 3. AMENDMENT. Section 15-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-03. Agreement of participation in ~~multidistrict area~~ center - Resolution of agreement. After approval of a plan pursuant to this chapter, all participating school districts of ~~a multidistrict an area~~ vocational ~~education and technology~~ center shall enter into an agreement of participation which must receive a vote of approval of the school board of each participating school district. Prior to the effective date of an approved plan, a resolution of agreement shall be adopted by a majority vote of each participating school board and such resolution shall be published once in the official newspaper of each county or counties of the participating school districts.

SECTION 4. AMENDMENT. Section 15-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-04. Center boards - Appointment of members - Terms - Compensation - Vacancies. ~~A multidistrict~~ An area vocational ~~education and technology~~ center shall be operated by a center board of not less than five members nor more than a total of one member for each participating district; provided, however, that each participating school district with three hundred or more high school students shall be allowed one member for each three hundred high school students or fraction thereof with a limitation of not more than three members from any one school district. Center board members shall be members of the school boards. The terms of office of the members of center boards shall be for at least one year and shall terminate upon the expiration of their terms on their respective school boards. Members shall be eligible for reappointment to center boards. Center board members shall receive the same compensation and expenses for attending center board meetings or for otherwise engaging in official business for the center as provided in section 15-29-05 for members of school boards. Compensation and expenses of center board members shall be paid out of center funds.

Vacancies on a center board shall be filled by the school board whose representation was lost when the vacancy occurred.

SECTION 5. AMENDMENT. Section 15-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-05. Special board plan for small center. If four or fewer school districts comprise ~~a multidistrict an area~~ vocational ~~education and technology~~ center and if enrollment within such school district is insufficient to provide five members in accordance with section 15-20.2-04, the boards of such school district shall agree upon the number and manner of selection of members of the center board and shall submit their plan of selection for approval by the state board pursuant to section 15-20.2-02.

SECTION 6. AMENDMENT. Section 15-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-07. Powers and duties of center boards. The powers and duties of a center board shall be as follows:



1. To supervise, manage, and control a multidistrict area vocational education and technology center established by the cooperating school districts pursuant to this chapter.
2. To provide vocational education programs approved by the state board.
3. To contract with, employ, and pay personnel to administer the affairs and to teach in the multidistrict area vocational education and technology center, and to remove for cause any personnel when the interests of the multidistrict area vocational education and technology center may require it; provided, that personnel employed by a center board shall have the same statutory rights as provided by law for personnel employed by public school districts.
4. To lease, acquire, or purchase vocational education equipment for a multidistrict area vocational education and technology center.
5. To lease, acquire, purchase, or sell vocational education facilities, including real property, for a multidistrict area vocational education and technology center; provided, that any purchase or sale of real property must first be approved by two-thirds of the school boards of the participating school districts.
6. To receive and administer any private, local, state, or federal funds provided for the operation and maintenance of a multidistrict area vocational education and technology center.
7. To enter into contracts consistent with the other powers and duties provided for by this chapter.

SECTION 7. AMENDMENT. Section 15-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-08. Assessment of participating districts for proportionate share of center expenses - Allocation of students - Civil penalty for failure to remit payment. A center board shall, for the purpose of paying any administrative, planning, operating, or capital expenses incurred or to be incurred, assess each participating school district its proportionate share based upon its high school enrollment as compared to the total high school enrollment of all participating school districts in the multidistrict area vocational education and technology center and shall assess each nonparticipating school district receiving services its proportionate share based upon its utilization of programs. A center board shall, as nearly as possible, allocate the number of students from each participating district to be served in a multidistrict area vocational education and technology center on the same proportionate basis as is used for the assessment of expenses.

A center board utilizing mobile units solely shall, for the purpose of paying any administrative, planning, operating, or capital expenses incurred or to be incurred, assess each participating school district its proportionate share based upon its utilization of programs as compared to total program utilization of all participating school districts in such center. A center board utilizing mobile units solely shall, as nearly as possible, determine the program utilization of each participating school district to be served based upon its high school enrollment as compared to

the total high school enrollment of all participating school districts in such center and the school's accessibility to those programs.

Each participating school district shall remit payment of the assessment of its share of expenses to the center board promptly after receipt of the assessment notice, or within a period of time determined by the center board, but no later than sixty days after the official date of receipt as noted on the assessment notice. A civil penalty of one percent per month shall accrue on all assessments not paid when due.

SECTION 8. AMENDMENT. Section 15-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-09. Distribution of state funds to multidistrict area centers - Rules and regulations. Funds which may be made available to the state board for distribution to multidistrict area vocational education and technology centers shall be apportioned and distributed by the state board to the multidistrict area vocational education and technology centers to assist such centers in defraying the cost involved in maintaining and operating such centers. The use of such funds shall be subject to such rules and regulations as may be prescribed by the state board, and shall be in accordance with the approved state plan for vocational education.

SECTION 9. AMENDMENT. Section 15-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-10. Appropriated and federal funds used for distribution. The funds distributed to the multidistrict area vocational education and technology centers under the provisions of section 15-20.2-09 shall be paid out of moneys appropriated to the state board of vocational education, including federal funds allotted to the state to promote and attain the purposes of state and federal legislation on vocational education.

SECTION 10. AMENDMENT. Section 15-20.2-11 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-11. District becoming participant in established center - Procedure. After a multidistrict area vocational education and technology center has been established, any other school district may become a participant in the center and may be governed by the provisions of this chapter upon following a process similar to that pursued by the school districts originally forming the center, including approval of the vote of the district board, the center board, and the state board according to the procedure set forth in sections 15-20.2-12 and 15-20.2-13.

SECTION 11. AMENDMENT. Section 15-20.2-12 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-12. District board resolution to participate in established center - Publication. A school district board may request that the state board and the center board approve such school district as a participating district in an established multidistrict area vocational education and technology center upon approval of a resolution by the school district board. When such resolution has been adopted by the school district board, it shall be published once in the official newspaper of the county or counties in which the district is located.

SECTION 12. AMENDMENT. Section 15-20.2-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.2-13. Referendum on district participation in ~~multidistrict area center~~ - Majority required for approval. A school district board shall not proceed to obtain approval as a participating district in ~~a multidistrict an area vocational education and technology center~~ if a petition for referendum of the question of said school district participating in ~~a multidistrict an area vocational education and technology center~~ signed by twenty percent of the qualified electors of said school district voting at the last annual school election is filed with the school board within sixty days of the publication of the resolution provided for in section 15-20.2-12. When such petition is filed, the school board shall not obtain approval as a participating district in ~~a multidistrict an area vocational education and technology center~~ until the question of whether the district shall enter into ~~a multidistrict an area vocational education and technology center~~ has been submitted to the qualified electors of the district. If a majority of the total number of votes cast on the question within the school district is in favor of the question, the school board may proceed to obtain approval as a participating district in ~~a multidistrict an area vocational education and technology center~~.

SECTION 13. AMENDMENT. Section 15-20.2-14 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-14. Withdrawal of district from participation in center - Submission to voters - Effect of withdrawals. The procedure for withdrawal shall be the same as for joining as provided for in sections 15-20.2-11 through 15-20.2-13, except that when a participating district is unable to obtain an approval of withdrawal from the center board, or the state board, or both, the participating district may submit the question to withdraw from the ~~multidistrict area vocational education and technology center~~ to the voters of the school district. If a majority of the total number of votes cast on the question is in favor of withdrawal, the participating school district shall be released from the ~~multidistrict area vocational education and technology center~~. Such withdrawal may become effective at the end of the next school year or on such a date as determined by the state board, but such withdrawal shall not affect the liability of the withdrawing school district for obligations incurred during its participation.

SECTION 14. AMENDMENT. Section 15-20.2-15 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-15. Dissolution of established center. An established ~~multidistrict area vocational education and technology center~~ may be dissolved in accordance with rules and procedures adopted by the state board.

SECTION 15. AMENDMENT. Section 15-20.2-16 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-16. Rules, regulations, and standards for ~~multidistrict area centers~~. The state board is hereby authorized and empowered to establish and adopt rules, regulations, standards, and procedures set forth in the state plan pertaining to the creation, operation, control, supervision, and approval of ~~multidistrict area vocational education and technology centers~~.

\* SECTION 16. AMENDMENT. Subsection 1 of section 15-47-38.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The term "superintendent" as used in this section includes district superintendents of schools and chief administrators of multidistrict special education units and multidistrict area vocational education and technology centers.

SECTION 17. AMENDMENT. Subsection 3 of section 52-09-08 of the North Dakota Century Code is amended and reenacted as follows:

3. The political subdivision, except a school district, a multidistrict special education board, or a center board of a multidistrict an area vocational education and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1. Within the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

Approved March 13, 1991

Filed March 13, 1991

\* NOTE: Section 15-47-38.1 was repealed by section 3 of House Bill No. 1249, chapter 198.

## CHAPTER 166

HOUSE BILL NO. 1282  
(Rydel)

### ACCREDITATION WAIVER

AN ACT to create and enact a new section to chapter 15-21 of the North Dakota Century Code, relating to the waiver of conditions for accreditation and approval; and to repeal section 15-41-26 of the North Dakota Century Code, relating to the waiver of conditions for accreditation and approval.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-21 of the North Dakota Century Code is created and enacted as follows:

Waiver of conditions for accreditation and approval. The superintendent of public instruction may waive any conditions for accreditation and approval imposed by statute for a reasonable length of time, provided the waiver encourages innovation or permits experimentation and provided the plans and purposes document the potential for an improved program. The superintendent may waive the conditions only upon the concurrence of a majority of a waiver committee composed of one person appointed by the North Dakota education association, one person appointed by the North Dakota council of school administrators, and one person appointed by the North Dakota school boards association.

SECTION 2. REPEAL. Section 15-41-26 of the North Dakota Century Code is repealed.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 167

SENATE BILL NO. 2590  
(Senator Heinrich)  
(Representative Gates)  
(Approved by the Committee on Delayed Bills)

### STUDENT PERFORMANCE STANDARDS

AN ACT to create and enact two new sections to title 15 of the North Dakota Century Code, relating to the establishment and implementation of student performance standards and performance assessment methods, and participatory school decisionmaking; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 15 of the North Dakota Century Code is created and enacted as follows:

Student performance standards and assessment - Preliminary activities - Continuing appropriation.

1. The superintendent of public instruction, subject to the financial limitations imposed by subsection 2, shall conduct preliminary research and engage in other appropriate activities to prepare for the development of student performance standards and the assessment program to be implemented during the 1993-95 biennium.
2. The funding for the activities of the superintendent described in subsection 1 must be provided from contributions, gifts, or grants received from the federal government, private organizations, or other nonstate sources and may be used only for the specific purpose for which the funds were contributed. These funds are hereby appropriated to the superintendent for the purpose of implementing subsection 1. The superintendent is not required to implement subsection 1 if adequate funding does not become available pursuant to this subsection.

SECTION 2. A new section to title 15 of the North Dakota Century Code is created and enacted as follows:

School district policy and plan for participatory school decisionmaking.

1. By July 1, 1994, each school board of a public school district, including the Fargo school district, shall adopt a policy and plan for implementing participatory school decisionmaking in that school district, including a description of how teachers, parents, school administrators, and other school employees of a school are to be involved in the decisionmaking process. Each school board, prior to adopting the policy and plan, shall adopt a procedure whereby

all interested persons are afforded a reasonable opportunity to submit their views concerning the content of the policy and plan, which views are not binding on the school board.

2. The superintendent of public instruction shall develop nonbinding guidelines to assist school boards in the development of policies and plans relating to participatory school decisionmaking, and make the guidelines available to nonpublic schools.
3. By July 1, 1994, each school board shall submit to the superintendent of public instruction a copy of the policy and plan for the school district. On July first of each even-numbered year thereafter, each school board shall submit to the superintendent a copy of a written evaluation of the policy and implementation plan and copies of any amendments to the policy and plan.
4. This section may not be construed to impair the rights, powers, or duties of local school districts and school boards in the management and control of local schools.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 1993.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 168

HOUSE BILL NO. 1089  
(Committee on Education)  
(At the request of the Governor)

### BOARD OF PUBLIC SCHOOL EDUCATION NOMINATING COMMITTEE

AN ACT to amend and reenact section 15-21-17 of the North Dakota Century Code, relating to the composition of the nominating committee for the state board of public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-21-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-17. Composition of state board of public school education. The state board of public school education shall consist of the superintendent of public instruction, and one qualified elector from each of the following districts within the state, to be appointed by the governor:

1. District one shall consist of the counties of Barnes, Cass, Grand Forks, Griggs, Nelson, Steele, and Traill.
2. District two shall consist of the counties of Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh.
3. District three shall consist of the counties of Dickey, Emmons, LaMoure, Logan, McIntosh, Ransom, Richland, and Sargent.
4. District four shall consist of the counties of Burleigh, Eddy, Foster, Kidder, McLean, Sheridan, Stutsman, and Wells.
5. District five shall consist of the counties of Burke, Divide, McKenzie, Mountrail, Ward, and Williams.
6. District six shall consist of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark.

Nominations shall be made by the governor from a list of three names for each position to be filled on such board, such names to be selected by a committee consisting of ~~the president of the North Dakota state's attorneys association, the president of the North Dakota education association, the president of the North Dakota school administrators association, and the president of the North Dakota school boards association.~~ Appointive members shall serve for terms of six years, arranged so that the term of two members shall expire on June thirtieth of each even-numbered year. The governor shall fill vacancies upon the committee. At all times, two members of the board shall be members of the North Dakota school boards association. The



superintendent of public instruction shall also serve as executive director and secretary of such board, shall call such meetings as may be required, shall supervise and carry out the policies of the board in relation to all functions of the board, and shall employ such personnel as shall be necessary to carry on such responsibilities as may be placed upon the board by law. The board shall annually elect a member of the board to serve as chairman. Appointive members shall be compensated at the rate of fifty dollars per day for each day actually and necessarily spent in the performance of their duties as board members and all members shall receive reimbursement for actual necessary expenses incurred in the performance of their duties from the biennial appropriation of the department of public instruction at the same rates as provided by law for other state officers. The board shall have authority to call upon any state office, officer, department, or agency for such advice and assistance as it may from time to time require.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 169

HOUSE BILL NO. 1409  
(Representatives Scherber, Gates, Kelsch)  
(Senators Yockim, Peterson, Marks)

### CHEMICAL ABUSE PREVENTION

AN ACT to create and enact five new sections to chapter 15-21.1 of the North Dakota Century Code, relating to chemical abuse prevention programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Five new sections to chapter 15-21.1 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

Chemical abuse preassessment team - Building level support team. Any school may establish a chemical abuse preassessment team composed of a school counselor, a social worker, and other appropriately trained persons, or utilize a building level support team for purposes of this Act. The team shall address law enforcement reports of chemical abuse violations. Within fourteen days of receiving a reported case, the team shall determine whether to provide the student, and in the case of a minor the student's parents, with information about school and community services in connection with chemical abuse.

Handling of records. Any record of a student's medical treatment or use of a student assistance program, or other individual student record generated under this chapter, is not to become part of the student's educational record. Such information is confidential and may not be released without the written consent of the student, or if the student is less than fourteen years of age, without the written consent of the student's parent or guardian.

Law enforcement agencies - Duty to inform team. Notwithstanding any other provision of law, a law enforcement agency shall provide notice of any incident occurring within the agency's jurisdiction in which the agency has probable cause to believe a student violated section 5-01-08, 19-03.1-23, 39-08-01, or 39-08-18, except when there is a prolonged criminal investigation and revealing information would jeopardize a successful conclusion to the case. The notice shall be in writing and shall be provided within two weeks after an incident occurs, to the principal of the school where the student is enrolled. The principal shall forward the reports to the school's chemical abuse preassessment team or building level support team.

Teacher - Duty to notify principal. Any teacher who knows or has reason to believe that a student is using, possessing, or transferring alcohol or a controlled substance while on the school premises or involved in school-related activities shall immediately notify the school's principal. Nothing in this section prevents a teacher or any other school employee from

reporting to a law enforcement agency any violation of law occurring on school premises or at school-sponsored events.

Immunity from liability. Any person, other than the alleged violator, participating in good faith in the making of a report or the furnishing of information to the chemical abuse preassessment team, is immune from any liability, civil or criminal, that might otherwise result from reporting the alleged chemical abuse. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting or furnishing information to the chemical abuse preassessment team is presumed.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 170

SENATE BILL NO. 2034  
(Legislative Council)  
(Interim Education Finance Committee)

### SCHOOL DISTRICT REORGANIZATION

AN ACT to create and enact a new subdivision to subsection 1 of section 15-27.6-04, a new chapter to title 15 of the North Dakota Century Code, and five new sections to chapter 15-27.6 of the North Dakota Century Code, relating to duties of interim district boards, cooperative arrangements for purchasing educational services, and the reorganization of restructured school districts; and to amend and reenact sections 15-27.1-01, 15-27.1-02, subdivision d of subsection 1 of section 15-27.6-04, and section 15-27.6-05 of the North Dakota Century Code, relating to the reorganization of restructured school districts and eligibility for supplemental pupil payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-01. Definitions applicable to chapters 15-27.1 through 15-27.4, 15-27.6, and section 11 of this Act. In this chapter and chapters 15-27.2, 15-27.3, ~~and~~ 15-27.4, 15-27.6, and section 11 of this Act unless the context or subject matter otherwise requires:

1. "Annexation" means an alteration of the boundaries of school districts through the attachment of territory from one existing school district to another existing operating school district.
2. "Contiguous" means two or more tracts of land which are in actual contact with each other at a common point.
3. "County committee" means the county committee for the reorganization of school districts.
4. "County superintendent" means the county superintendent of schools.
5. "Dissolution of school districts" means the process through which an existing school district ceases its active functions in its present organizational form and the district's territory is attached to one or more adjoining existing operating school districts.
6. "Elector" means a person who possesses the qualifications of an elector as provided in section 16.1-01-04.
7. "Reorganization of school districts" means the formation of a new school district by either the unification of two or more existing

operating districts into one larger district or separation of territory from one or more operating districts to create one or more new operating districts.

8. "State board" means the state board of public school education.
9. "Territory" means all or any portion of an organized school district.

SECTION 2. AMENDMENT. Section 15-27.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-02. Reorganization not to include annexation or dissolution - Boundary changes application of chapters 15-27.1 through 15-27.4. Chapter 15-27.3 does not apply to chapter 15-27.2 or to chapter 15-27.4 except where specifically referenced in chapters 15-27.2 and 15-27.4. Chapters 15-27.2 and 15-27.4 are separate and additional methods for changing school district boundaries. Except as provided in ~~chapter~~ chapters 15-27.5 and 15-27.6, the boundaries of school districts may be changed or altered only by annexation, reorganization, or dissolution as provided for in chapters 15-27.2, 15-27.3, and 15-27.4. ~~This~~ Except as provided in chapters 15-27.5 and 15-27.6, this chapter and chapters 15-27.2, 15-27.3, and 15-27.4 apply to all school districts in the state, ~~except school districts established pursuant to chapter 15-27.5~~, including the board of education of the city of Fargo and the district under its jurisdiction for school purposes.

SECTION 3. AMENDMENT. Subdivision d of subsection 1 of section 15-27.6-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. Develop a process for school districts or parts of school districts to join ~~or withdraw from~~ the projected restructured school district ~~or withdraw from the projected restructured school district by annexing to another school district.~~

SECTION 4. A new subdivision to subsection 1 of section 15-27.6-04 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Provide for the training of professional staff employed within the consortium in preparation for assuming positions in the reorganized district.

SECTION 5. AMENDMENT. Section 15-27.6-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.6-05. State aid - Planning grants - Supplemental pupil payments.

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.
2. Each ~~participating school~~ interim district board is entitled to receive state aid for a period not to exceed three years in the amount of from one hundred twenty-five to one hundred sixty-five dollars ~~per~~ for each full-time equivalent pupil in average daily membership ~~the previous year in the participating school districts.~~ The interim district board shall have the option to receive the

amount equivalent to its third-year payment over a two-year period. This extended payment request must be contained in the consortium's third-year cooperative plan. The superintendent of public instruction shall distribute the payments pursuant to the interim district boards in the same manner provided in section 15-40.1-05 for the distribution of payments to school districts. Prior to being entitled to the maximum payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must be attempting to improve the quality of instruction as determined by the superintendent of public instruction.

- 3- Upon adoption of the restructuring plan by the voters of the participating school districts pursuant to chapter 15-27.3, the newly formed school district is eligible to receive the supplemental pupil payment for an additional period of two years following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during the year prior to the effective date of the reorganization.

SECTION 6. A new section to chapter 15-27.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

School district reorganization - Option to withdraw by annexing to another district - Hearing. The interim district board shall develop a proposal for the reorganization of the participating districts. The interim district board shall include all land located within the boundaries of the participating school districts in the reorganization proposal; provided, however, that a participating school district or part of a school district may be excluded from the reorganization proposal if the school district or part of the school district annexes to another school district. Any school district or part of a school district within the consortium may annex to another school district at any time. The interim district board shall hold a public hearing on the advisability of any proposal by the board for the reorganization of school districts. Notice of the hearing must be given by publishing a notice in the official county newspaper in each county affected by the proposed reorganization at least fourteen days prior to the date of any hearing. At the hearing, the interim district board shall make available to the public information about the value and amount of all school property and all bonded and other indebtedness of each school district involved in the proposed reorganization. At the hearing, the interim district board must make available to the public information regarding the curriculum offerings and staffing requirements to be implemented in the proposed reorganized school district. At the hearing, the board shall receive testimony offered by any person or school district interested in any reorganization proposal of the board. The testimony and documentary evidence considered by the board must include any information regarding the factors listed in subsections 1 through 15 of section 15-27.3-05. The board shall make specific findings with reference to each of the factors to which testimony or documentary evidence is directed in proceedings before the board. The board shall keep a record of all hearings on the reorganization of school districts and of all findings and terms of adjustment of property, debts, and liabilities among the districts involved and shall submit this information to the county committee at the time of submitting a proposal.

SECTION 7. A new section to chapter 15-27.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Determination and adjustment of property, assets, debts, and liabilities among districts - Determination of tax levy - Appeals. After the hearing, the interim district board shall determine the value and amount of all school property and all bonded and other indebtedness of each school district affected by the reorganization proposal and shall consider the amount of outstanding indebtedness and make an equitable adjustment of all property, assets, debts, and liabilities among the districts involved. The interim district board shall also determine the amount necessary to meet the expenses of the proposed reorganized district and shall propose a tax levy sufficient to meet those expenses. The interim district board shall submit the proposed tax levy to the county committee and the state board as part of the reorganization proposal, and if approved by the county committee and the state committee, the proposed tax levy must be included as part of the proposal and submitted to the electors of the proposed new district. Tax levies submitted as part of a reorganization proposal that is approved are not subject to mill levy limitations provided by law. Appeals on the question of adjustment of property, debts, and liabilities among the districts may be made as provided in section 15-27.3-07.

SECTION 8. A new section to chapter 15-27.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

County committee review of proposal - Public meeting required - Submission of approved proposal to state board. After the hearing required by section 6 of this Act, the interim district board shall make necessary changes to the proposal and submit the proposal to the county committee for its approval. The county committee shall review the proposal at a public meeting. The county committee shall publish in the county newspaper of any county affected by the reorganization proposal notice of the meeting at least fourteen days before the meeting. If a majority of the members of the county committee approve the proposal, the county committee shall submit the proposal to the state board for approval or disapproval. If the school districts involved in the reorganization proposal are situated in more than one county, a special committee composed of not fewer than three members of the county committee, selected by the committee, of the county encompassing the major portion of each school district shall review the proposal. The proposal must be submitted to each county committee for its approval. If the reorganization proposal is approved by a majority of the members of at least one-half of the county committees, or the members of one or more of the special committees fail or refuse to meet with the committee or committees from other counties, the county superintendent of the county in which the largest number of pupils who would be affected by the proposed new district reside shall submit the reorganization proposal to the state board for approval or disapproval. Approval of the reorganization proposal by the state board has the same effect as approval by all the county committees. If none of the county committees approves the reorganization proposal, it may not be presented to the state board for review. If the school districts are situated in more than one county but the major portions of those school districts are situated in the same county, the county committee of that county shall consider the matter.

SECTION 9. A new section to chapter 15-27.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Approved proposal received by county superintendent - Special election called - Formation of new district.

1. Upon receipt from the state board of an approved proposal for the reorganization of school districts, the county superintendent, after consulting with the interim district board, shall call a special election as provided in section 15-27.3-08.
2. If a majority of electors residing within each school district vote in favor of the formation of the new district, the county superintendent shall make the proper adjustments and perform all necessary duties as provided in subsection 6 of section 15-27.3-08.
3. If fewer than all of the districts vote in favor of a new district, any contiguous districts voting in favor of the proposal shall form a new district if the new district would qualify to receive the payments provided for in section 10 of this Act and if approved by the state board. Any contiguous districts voting in favor of forming a new district, but that would not qualify for payments under section 10 of this Act, may form a new district. To form a new district, the board members of the interim district board who represent the contiguous districts involved shall make a determination and adjustment of property, assets, debts, and liabilities of the districts as provided in section 15-27.3-04 and make a determination of tax levy as provided in section 15-27.3-06 and submit a new proposal to the state board for approval. If the state board approves the plan, the county superintendent shall make the proper adjustment of the property, assets, debts, and liabilities as provided in the proposal and organize and establish the districts and, in doing so, shall perform all other necessary duties as provided in subsection 6 of section 15-27.3-08.
4. If a school district does not vote in favor of forming a new school district, any part of that school district excluded from the reorganization proposal pursuant to section 6 of this Act may either proceed with annexation or remain a part of that school district.

SECTION 10. A new section to chapter 15-27.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Supplemental pupil payments.

1. A newly formed district is eligible to receive the supplemental pupil payment provided for in section 5 of this Act for an additional period of two years following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during the year prior to the effective date of the reorganization if the newly formed district:
  - a. Encompasses at least seven hundred square miles [181299.168 hectares], enrolls at least six hundred students, and, prior to the reorganization, consisted of three contiguous school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs;
  - b. Prior to the reorganization, consisted of at least six contiguous school districts, four of which operated grades kindergarten through twelve programs or grades one through twelve programs; or



- c. Either enrolls a minimum of six hundred students or encompasses at least seven hundred square miles [181299.168 hectares], and, prior to the reorganization, consisted of four or five school districts, each of which operated grades kindergarten through twelve programs or grades one through twelve programs.
2. Sections 15-27.3-12 through 15-27.3-15 and 15-27.3-17 through 15-27.3-21 apply to school district reorganizations under this chapter.
3. A newly formed school district that was approved to receive a planning grant prior to the effective date of this Act is eligible to receive the additional supplemental pupil payments.

SECTION 11. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

School district cooperative arrangements - Rules. The superintendent of public instruction, with assistance from the state board of public school education, shall adopt rules for the purpose of administering supplemental payments to a purchaser school district which enters into a cooperative arrangement with a provider school district for the purpose of purchasing educational services. Any school district enrolling at least one thousand students in grades kindergarten through twelve is defined as a "provider district". Any school district enrolling five hundred ninety-nine students or fewer in grades kindergarten through twelve is defined as a "purchaser district". A school district enrolling at least six hundred and fewer than one thousand students in grades kindergarten through twelve has the option of being a provider district or a purchaser district under this section. In paired relationships under this provision, purchaser districts that are contiguous to provider districts and therefore eligible to reorganize with or annex to the provider district shall commit to a vote on reorganization or annexation to the provider district no later than the end of the third year in order to receive full payment. The superintendent of public instruction, if requested, shall provide assistance to school districts in the development and implementation of a plan to enter into a cooperative arrangement to purchase educational services.

Pairing - Eligibility - Report.

The school districts must submit a plan to the state board of public school education. The plan must include:

- a. Evidence of school board approval, by majority vote, of the plan.
  - b. A plan for purchasing and providing educational services, including a description of the educational services that are to be purchased.
  - c. A time line for implementation of the plan.
  - d. Any other requirement of the superintendent of public instruction or the state board of public school education.
2. Upon approval of the plan and any amendments to the plan to enter into a cooperative arrangement to purchase and provide educational

services by a majority vote of the school board members of each district and the state board of public school education, the superintendent of public instruction shall make supplemental payments to the school district as provided in this chapter. No supplemental payments may be made for any service proposed to be purchased if the school district is receiving a payment from other sources, other than the state foundation aid program, for that service as determined under rules adopted by the superintendent of public instruction. No supplemental payments may be used to purchase any course or service, except transportation service, that is available in the school district receiving the supplemental payments at the time the plan is approved.

Cooperative arrangements - Supplemental payments.

1. The school district purchasing educational services is entitled to receive state aid for a period not to exceed three years in an amount equal to the actual cost of purchasing the educational services or up to one hundred sixty-five dollars per full-time equivalent pupil for each pupil from the school district purchasing educational services, whichever is less. The superintendent of public instruction shall distribute the payments pursuant to section 15-40.1-05 during the term of the cooperative arrangement or thereafter.
2. No school district that enters into a cooperative arrangement to purchase educational services may receive supplemental payments under chapter 15-27.6 during the term of the cooperative arrangement or thereafter.
3. At least ninety percent of the supplemental payments a school district receives must be used to purchase educational services and not more than ten percent of the supplemental payments may be used by the school district receiving the payments for administrative and transportation expenses related to the establishment and maintenance of the cooperative arrangement.
4. This chapter does not prohibit a school district with an enrollment of at least one thousand students in grades kindergarten through twelve from entering into cooperative arrangements with more than one school district.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 171

### SENATE BILL NO. 2108 (Committee on Education)

(At the request of the Superintendent of Public Instruction)

## FOUNDATION AID FOR OTHER STATES

AN ACT to amend and reenact sections 15-27.1-11 and 15-40.2-09 of the North Dakota Century Code, relating to foundation aid payments for attendance of students at out-of-state schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.1-11. Reorganization, annexation, or dissolution of school district not operating a school - Transportation. Any school district in this state which is not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, and any school district that may cease to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall become, through the process of reorganization, annexation, or dissolution as provided by law, a part of a school district operating an approved elementary or high school. Any school district not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization with or annexation to an operating school district by July 1, 1989. Any school district that ceases to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization or annexation within two years from the date the school district ceased to operate either an approved elementary or high school. Any student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to sections 15-27.1-11 and 15-27.4-01, and which has been sending students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district, subject to the provisions of section 15-40.2-09. The students in any district that is attached by annexation, reorganization, or dissolution pursuant to sections 15-27.1-11 and 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by sections 15-27.1-11 and 15-27.4-01 which does not reorganize or annex itself to an operating school district within the time limit prescribed in sections 15-27.1-11 and 15-27.4-01 shall dissolve

and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4. This section does not apply to school districts established pursuant to chapter 15-27.5.

SECTION 2. AMENDMENT. Section 15-40.2-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance when district annexed or reorganized. Students may attend a school in a bordering state under the following circumstances:

1. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school or institution in a bordering state, and the school board of the school district within which such student resides may contract with the bordering state for the education of such student.
2. A student who resides within a school district which is annexed to or reorganized with another district or districts, and ~~which has been sending students to a school district in a bordering state because of proximity or terrain who attended a school district in a bordering state during the immediately preceding school year,~~ shall be permitted to attend or continue attending school in the district in the bordering state.

~~If a request for attendance is denied under subsection 1 or subsection 2 by the school board of the district in which the student resides denies a request for attendance in another state, an appeal may be made to the three-member committee referred to in section 15-40.2-05. The decision of the committee may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision shall be final. In the event that the district does not comply with a decision requiring that tuition charges be paid, state payments shall be withheld as provided in section 15-40.2-05.~~

~~Payments shall be made by the county of the pupil's residence to the school district or institution in the bordering state for attendance under the provisions of this section in an amount equal to the per-pupil payments as provided in section 15-40.1-07 or 15-40.1-08, as the case may be, and the Payments must be made to the school district or institution in the bordering state for state foundation aid for students attending out-of-state schools under a reciprocal agreement based on actual enrollment for that year. Payments will be determined as provided in section 15-40.1-07 or 15-40.1-08 based on the weighting factor of the student's district or residence. The remainder of the pupil's tuition as determined under section 15-40.2-10 shall be paid by the district of the pupil's residence. Pupils attending public schools or institutions in bordering states in accordance with this section shall be certified by the district or institution in the bordering state to the county superintendent of the county of the pupil's residence, and payments shall be made from the county to the school district or institution in the bordering state. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.~~

This section shall not be construed to require the district of residence to provide pupil transportation, or payments in lieu thereof, for pupils for whom the payment of tuition has been approved.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 172

SENATE BILL NO. 2067  
(Legislative Council)  
(Interim Judiciary Committee)

### TAX CREDITS FOR FORMER SCHOOL DISTRICTS

AN ACT to amend and reenact subsection 6 of section 15-27.2-04 and section 15-27.4-03 of the North Dakota Century Code, relating to tax credits for those who own property within dissolved and annexed school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 15-27.2-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. a. If the annexation is approved by the state board, the county committee may cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly. The unobligated cash balance in excess of ten thousand dollars not designated for indebtedness ~~shall be~~ is a credit for ~~the residents of those who own property within~~ the annexed school district against taxes levied by the receiving school district in the year or years following the annexation depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is attached to more than one school district, the credit that ~~the residents of those who own property within~~ the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to annexation.
- b. Any political subdivision required to provide a tax credit under subdivision a, as a result of an annexation occurring after January 1, 1989, may upon approval of the county commissioners, provide a cash refund in lieu of the tax credit. The school district holding the unobligated cash balance shall, at the request of the county auditor, pay to the county treasurer the amount to be paid to those who own property within the annexed district. The treasurer shall issue the refund to the owner of the property, as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against any property, the treasurer shall first apply the tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total

taxable value of the annexed district during the last year taxes were levied.

SECTION 2. AMENDMENT. Section 15-27.4-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.4-03. Unobligated cash balance of dissolved school district - Tax credits. The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for the residents of those who own property within the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is dissolved and attached to more than one school district, the credit that the residents of those who own property within the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 173

HOUSE BILL NO. 1523  
(Representatives Bodine, Skar, Muhs)  
(Senator Satrom)

### TEACHER NEGOTIATIONS AND CONTRACTS

AN ACT to amend and reenact section 15-27.3-13 of the North Dakota Century Code, relating to teacher negotiations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.3-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.3-13. Board may negotiate prior to assumption of duties - Termination of teachers.

1. Notwithstanding any provision of this chapter, the school board for a new school district established pursuant to this chapter shall negotiate in the manner provided by chapter 15-38.1 with the teachers of the district in lieu of the old board or boards prior to the effective date of assumption of its other duties pursuant to section 15-27.3-15. The school board may enter into agreements with representative organizations pursuant to chapter 15-38.1. If on July first of the year the newly reorganized school district begins operations, a negotiated agreement has not been entered into between the board and the teachers pursuant to chapter 15-38.1, until the end of the negotiation process, no teacher employed by the newly reorganized school district may receive less in salary and benefits than that teacher received for the previous school year. For purposes of this section, salary and benefits include salary, insurance benefits, teachers' fund for retirement contributions, personal leave, sick leave, accumulated sick leave, extracurricular salary, reduction-in-force policy, grievance procedures, and recall procedures.
2. After the establishment of any new school district pursuant to this chapter, the school board for the new school district shall, on or before ~~April fifteenth~~ February first of the year in which the reorganization takes effect, hold a public hearing and present at the hearing a detailed plan setting forth the curriculum, class offerings, and staffing positions which will be offered by the new school district. The school board shall give notice of the hearing by publication in the official county newspaper in each county affected by the proposed reorganization, at least fourteen days prior to the date of the hearing. The school board for the new school district shall, on or before April fifteenth of the year in which the reorganization takes effect, notify those teachers of the districts which are being reorganized whether, taking into account reductions in staff positions due to the reorganization, they will be offered contracts of employment with the new district.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 174

SENATE BILL NO. 2452  
(Senators Heinrich, Krebsbach, Tomac)  
(Representatives Kolbo, Myrdal)

### SCHOOL DISTRICT BUSINESS MANAGERS

AN ACT to create and enact a new subsection to section 15-29-08 of the North Dakota Century Code, relating to school district business managers; and to amend and reenact sections 15-27.5-03, 15-27.5-04, and 15-29-03 of the North Dakota Century Code, relating to school district business managers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.5-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.5-03. Organization of school board - Meetings — ~~Appointment of business manager.~~ A majority of the board is a quorum and the agreement of a majority of the members present is necessary for the transaction of any business. The annual meeting of the school board must be held during the month of July following the appointment to the board, on a date called by the president and convenient to the rest of the members. At the annual meeting in July, the board members shall elect one member to serve as president for a one-year term. Notice of any regular or special meeting must be given in writing to each member of the board; provided that the attendance at any meeting, without objection, by any board member constitutes a waiver of the notice required to be given to the member. The board must hold regular meetings for transacting business. Special meetings may be called by the president or by any two members of the board. ~~The board shall appoint a business manager who is not a member of the board who shall hold office at the will of the board and receive compensation as fixed by the board.~~

SECTION 2. AMENDMENT. Section 15-27.5-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-27.5-04. School board - Duties. Any school board established pursuant to this chapter shall, in the conduct of its business:

1. Place primary importance on the education and social well-being of the children residing in the school district.
2. Give due respect to the wishes of the parents of each child residing in the school district with regard to the provision of education to those children.
3. Enter into written contracts or agreements to provide for the education of the children residing in the school district.
4. Conduct all board meetings as provided in section 44-04-19.



5. Employ a business manager who is not a member of the board and fix compensation for that person. A business manager may be dismissed or suspended without prior notice for serious cause, otherwise only upon thirty days' written notice by the board.

SECTION 3. AMENDMENT. Section 15-29-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-29-03. Organization of school board - Election of president  
~~—Appointment of business manager. At the annual meeting, the school board shall elect from among its members a president who shall serve for one year. The board shall appoint a business manager who is not a member of the board who shall hold office during the pleasure of the board and receive such compensation for services as must be fixed by the board.~~

SECTION 4. A new subsection to section 15-29-08 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To employ a business manager who is not a member of the board and fix compensation for that person. A business manager may be dismissed or suspended without prior notice for serious cause, otherwise only upon thirty days' written notice by the board.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 175

SENATE BILL NO. 2220  
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT ELECTION EXPENSES

AN ACT to amend and reenact section 15-28-10 of the North Dakota Century Code, relating to payment for expenses of the notice of an annual school district election.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-28-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-28-10. Duties of election officials - Other statutes applicable. Sections 16.1-08-02, 16.1-10-01, 16.1-10-06, 16.1-10-06.1, 16.1-10-07, 16.1-10-08, 16.1-13-22, 16.1-13-23, 16.1-13-30, 16.1-15-01, 16.1-15-04, and 16.1-16-04 apply to elections held under sections 15-28-06 and 15-28-09. After the votes are canvassed, and within twenty-four hours after the polls are closed, the judges shall make their returns to the business manager of the school district. All expenses of elections held by a school district, ~~except the notice of the annual election,~~ shall be paid by the district.

Approved March 11, 1991  
Filed March 11, 1991

\* NOTE: Section 15-28-10 was also amended by section 1 of Senate Bill No. 2299, chapter 176.

## CHAPTER 176

SENATE BILL NO. 2299  
(Stenehjem)

### SCHOOL DISTRICT ELECTION RESULTS

AN ACT to amend and reenact sections 15-28-10 and 15-47-06 of the North Dakota Century Code, relating to school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-28-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-28-10. Duties of election officials - Other statutes applicable. Sections 16.1-08-02, 16.1-10-01, 16.1-10-06, 16.1-10-06.1, 16.1-10-07, 16.1-10-08, 16.1-13-22, 16.1-13-23, 16.1-13-30, 16.1-15-01, 16.1-15-04, and 16.1-16-04 apply to elections held under sections 15-28-06 and 15-28-09. ~~After the votes are canvassed, and within twenty-four hours after the polls are closed, the judges shall make their returns to the business manager of the school district. All expenses of elections held by a school district, except the notice of the annual election, shall be paid by the district.~~

\*\* SECTION 2. AMENDMENT. Section 15-47-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall proceed to count and canvass the votes for each office and ~~the person receiving the highest number of votes for an office must be declared elected within twenty-four hours after the polls are closed, the returns must be signed by the judges and clerks of the election and filed with the business manager of the school district. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by said candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by said candidates. A record of the proceedings must be made in the records of the business manager of the district. Returns must be made to the school board showing the number of votes cast for each person for any office, and such returns must be signed by the judges and clerks of election and filed with the business manager of the district within two days thereafter.~~ The school board shall canvass all election returns and shall declare the result of any election within three days thereafter, and the of the election, and in the case of a tie, within three days of the breaking of the tie pursuant to this section. The result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent

\* NOTE: Section 15-28-10 was also amended by section 1 of Senate Bill No. 2220, chapter 175.

\*\* NOTE: Section 15-47-06 was also amended by section 1 of House Bill No. 1120, chapter 197, and by section 1 of Senate Bill No. 2506, chapter 212.

voters' ballots may be used in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 177

SENATE BILL NO. 2582

(Graba)

(Approved by the Committee on Delayed Bills)

### SCHOOL BOARD VACANCIES

AN ACT to amend and reenact section 15-29-06 of the North Dakota Century Code, relating to vacancies on school boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-29-06. Vacancies on school board - How filled. The school board shall have power to fill by appointment any vacancy which may occur on the board. An appointee shall hold office until the next annual election and until a successor is elected and qualifies. When any such appointment is made, the business manager shall certify the same to the county superintendent of schools. In the event that the school board shall fail to fill such vacancy within sixty days after notice of a vacancy has been filed with the county superintendent of schools, the county superintendent shall call a special election for the purpose of filling the vacancy. Such election must be conducted in the same manner as the annual school election. A vacancy shall occur on the school board by death, resignation, removal from the school district, or otherwise. Any school officer may be removed from office by a court of competent jurisdiction as provided by law, and in such event a vacancy shall exist. If a school board vacancy or vacancies occur that reduce the membership of the school board to less than a quorum, the state board of public school education shall appoint a person or persons to serve on the school board until the vacancy or vacancies have been filled in accordance with this section.

Approved April 5, 1991

Filed April 8, 1991

## CHAPTER 178

HOUSE BILL NO. 1501  
(Myrdal, Keisch)

### SCHOOL DISTRICT OFFICIAL NEWSPAPER

AN ACT to amend and reenact subsection 25 of section 15-29-08 of the North Dakota Century Code, relating to a school district's official newspaper.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 25 of section 15-29-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25. To designate, at the annual meeting, a newspaper of general circulation in the school district that meets the requirements of section 46-05-01 as the official newspaper of the school district.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 179

SENATE BILL NO. 2593  
(Senators Kelsh, Freborg)  
(Representatives Wardner, Stofferahn)  
(Approved by the Committee on Delayed Bills)

### SCHOOL BOARD FINAL OFFER MEETING

AN ACT to create and enact a new subsection to section 15-29-08 of the North Dakota Century Code, relating to school board meetings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-29-08 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, if an impasse has been declared and final offer resolution is in effect, to hold one executive session of the board prior to submitting its final offer. The subject of the meeting must be limited to the determination of the board's final offer. Before holding the meeting, the board must, by a majority vote in a public meeting, decide to hold the executive session to determine its final offer. The time of commencement and place of the executive session must be announced at the public meeting. A written roll of members and all other persons present at the executive session must be made available to the public after the executive session. The proceedings of the executive session must be recorded on tape by the board and must be preserved for two years after the contract is signed. Minutes of the executive session must also be kept, and the minutes and the tape recording must be made available to the public after the negotiated contract is signed by the board.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 180

SENATE BILL NO. 2195  
(Freborg)

### **SCHOOL BOARD MEMBER TRAINING**

AN ACT to create and enact a new section to chapter 15-29 of the North Dakota Century Code, relating to in-service training for newly elected school board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-29 of the North Dakota Century Code is created and enacted as follows:

School board members - Attendance at workshop. Each newly elected school board member shall, within one year of assuming office, attend an in-service training workshop hosted by the North Dakota school board association or its designee. The workshop must include presentations on the role of a school board member, the duties of a school board, and information regarding educational financing.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 181

SENATE BILL NO. 2542  
(Senators David, O'Connell)  
(Representatives Howard, Gorman)

### HOME-BASED INSTRUCTION

AN ACT to create and enact a new section to chapter 198 of the 1989 Session Laws of North Dakota, relating to home-based instruction; and to amend and reenact section 5 of chapter 198 of the 1989 Session Laws of North Dakota, relating to home-based instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5 of chapter 198 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 5. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

Students receiving home-based instruction - Quality assurance. In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the following minimum indices of quality education are established:

1. A standardized achievement test used by the school district in which the child resides or, if requested by the parent, a standardized achievement test used by a state-approved private or parochial school must be given annually to each child receiving home-based instruction. The test must be given in the child's learning environment and must be administered by a certified teacher employed by the public school district in which the parent resides or, if requested by the parent, employed by a state-approved private or parochial school. The cost of such testing must be borne by the local school district in which the child resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is administered by a certified teacher employed by a state-approved private or parochial school. Results of such testing must be provided to the local public school superintendent. If the child resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the child's residence.
2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem. If the multidisciplinary assessment team evaluation determines that the child is not handicapped according to the eligibility criteria of the department of public instruction and the child does not

require specially-designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction a statement, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction, and the student requires specially-designed instruction due to the handicap and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction an individualized education program plan, formulated within rules adopted by the department of public instruction, indicating that the child's needs for special education are being appropriately addressed by persons qualified to provide special education or related services. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03.

3. Any certificated teacher supervising home-based instruction shall spend a minimum average ~~each month~~ of one hour per week in contact with ~~each the first student and in conjunction with the parent.~~ With two or more children under supervision, the teacher shall monitor a minimum additional one-half hour per month for each child under the teacher's supervision who is receiving home-based instruction. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.
4. If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress.

SECTION 2. A new section to chapter 198 of the 1989 Session Laws of North Dakota is created and enacted as follows:

Home-based instruction - Liability. No state agency, public school, or county superintendent may be found liable for accepting as correct the information on the statement of intent or for any damages resulting from the parent's failure to educate the child.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 182

HOUSE BILL NO. 1450  
(Representatives Snyder, Porter)  
(Senators Krebsbach, Schoenwald)

### HOME-BASED INSTRUCTION DIPLOMAS

AN ACT to create and enact a new section to House Bill No. 1421, compiled as chapter 198 of the 1989 Session Laws of North Dakota, relating to high school diplomas for students receiving home-based instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to House Bill No. 1421, compiled as chapter 198 of the 1989 Session Laws of North Dakota, is created and enacted as follows:

Home-based instruction - High school diploma - Fee. The superintendent of public instruction shall issue to a student who has completed the requirements for high school graduation through home-based instruction a diploma that clearly indicates that the requirements for graduation have been met through home-based instruction. The superintendent may charge a fee for issuing the diploma.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 183

SENATE BILL NO. 2107

(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### SCHOOLBUS DRIVER MEDICAL CARDS

AN ACT to amend and reenact section 15-34.2-14 of the North Dakota Century Code, relating to qualifications of schoolbus drivers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-34.2-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.2-14. Qualifications, character, and age of schoolbus and school vehicle drivers. The driver of a schoolbus or a school vehicle must be in good physical and mental health, able-bodied, free from communicable diseases, and must have normal use of both hands, both feet, both eyes, and both ears. It is the duty of school boards to designate reputable physicians to examine each driver annually. ~~Each~~ Every two years, each driver shall present a physician's certificate of physical fitness and a medical card, as required by the United States department of transportation, to the employing school board before a contract is signed. Such driver must possess a good moral character, must be at least twenty-one years of age, and must have a North Dakota driver's license. However, the school board may lower the minimum age of a driver below twenty-one. This section does not prohibit regular members of the faculty of an elementary or high school from operating vehicles for the purpose of transporting students to regular or special events related to the educational programs in which the students are enrolled.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 184

HOUSE BILL NO. 1399  
(Representatives Coats, Kelsch)  
(Senator Jerome)

### SCHOOL DISTRICT TRANSPORTATION AGREEMENTS

AN ACT to amend and reenact section 15-34.2-16 of the North Dakota Century Code, relating to school district agreements for the provision of comprehensive transportation services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-34.2-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.2-16. Transportation of nonpublic elementary and high school students - Comprehensive transportation services - Conditions.

1. When authorized by the school board of a public school district providing transportation for public elementary and high school students, elementary and high school students attending nonpublic schools may be transported on public schoolbuses to and from the point or points on established public schoolbus routes on such days and during the times that the public school district may authorize and agree to the transportation of such students only when there is passenger room available on such buses, according to the legal passenger capacity for such buses, when such buses are scheduled according to this section; provided, however, no payments shall be made from state funds for any mileage costs for any deviation from the established public routes which may be caused by any agreement entered into pursuant to this ~~section~~ subsection.
2. The school board of a public school district providing transportation for public elementary and high school students may utilize the authority conferred by article VII, section 10 of the Constitution of North Dakota and section 54-40-08 to enter into agreements with other political subdivisions, the state, or the federal government for the joint provision and integration of transportation services to the public. All safety requirements imposed by law for school buses and school vehicles apply to transportation services to students provided pursuant to such an agreement, including requirements imposed by title 39 and requirements for schoolbus drivers set forth in section 15-34.2-14. Transportation services to students provided pursuant to this subsection qualify for state aid for transportation pursuant to chapter 15-40.1; however, no payments may be made from state funds for any mileage costs for any deviation from the established schoolbus routes, which may be caused by any agreement entered into pursuant to this subsection.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 185

SENATE BILL NO. 2472  
(Senator Goetz)  
(Representative A. Olson)

### TEACHER CONVICTION NOTICE

AN ACT to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to certificated teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

State's attorney - Duty to notify the superintendent of public instruction. The state's attorney shall notify the superintendent of public instruction, in writing, whenever a certificated teacher is convicted of a felony or a class A misdemeanor.

Approved 5, 1991  
Filed April 8, 1991

## CHAPTER 186

HOUSE BILL NO. 1593  
(Representatives Martinson, Stofferahn)  
(Senators Heinrich, Yockim, Lips)

### TEACHERS' FINAL OFFER RESOLUTION

AN ACT to amend and reenact section 15-38.1-13 of the North Dakota Century Code, relating to teachers' representation and negotiation; to repeal sections 15-38.1-03, 15-38.1-04, 15-38.1-05, and 15-38.1-06 of the North Dakota Century Code, relating to the education factfinding commission and the cost of factfinding; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-38.1-13 of the North Dakota Century Code is amended and reenacted as follows:

15-38.1-13. Impasse procedures.

1. An impasse shall be deemed to exist under any of the following conditions:
  - a. Where an agreement as set forth in subdivision b of subsection 1 of section 15-38.1-12 has not been formulated and after a reasonable period of negotiation regarding terms and conditions of employment or employer-employee relations, a dispute exists between a school board and any representative organization, an impasse may be deemed to exist.
  - b. When both parties agree that an impasse exists.
  - c. In the event that the written agreement reached under section 15-38.1-12 does not include procedures for resolving a dispute which arises, an impasse may be deemed to exist.
  - d. Written agreements negotiated under section 15-38.1-12 may include procedures to be invoked in the event of disputes under the contract. Where such procedures are inadequate to resolve the dispute an impasse may be deemed to exist.
2. An impasse may shall be resolved in the following manner:
  - a. The parties may agree upon mediation of the controversy by mutually selecting a mediator or mediators, and agreeing to a distribution of the cost of the mediation.
  - b. ~~If mediation fails or is not attempted, the aggrieved school board or representative organization may request the commission to render assistance as provided in this section.~~



- (1) Upon request of either contending party, and in the event that the commission determines that an impasse exists between a school board and a representative organization, the commission shall itself act as a factfinding commission or appoint a factfinder from a list of qualified persons maintained by the commission. If a factfinder is appointed, he shall have such powers as are designated to him by the commission and he shall make his recommendation to the commission. The commission shall consider the facts and make its findings and recommendation, or it shall consider the report and recommendation of its factfinder, and, after such further investigation as it may elect to perform, it shall make its findings and recommendation. Within forty days after the request to render assistance is received, the findings and recommendation of the commission shall be transmitted to the contending parties and if the issue is not then resolved, the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.
- (2) In the event that facts are found or recommendations made under factfinding procedures agreed upon between the contending parties and the impasse continues, the commission may consider such findings and recommendations without instituting its own factfinding procedures and from them issue its own findings and recommendation to the contending parties, and if the issue is not then resolved the commission shall between ten and twenty days after such transmittal make its findings and recommendation public.

If the impasse persists for thirty days, the parties shall, upon the request of either party, engage in final offer resolution of the remaining disputes, as follows:

- (1) The party requesting final offer resolution shall, with its request for resolution, name one person who resides in the school district to serve as a member of the resolution panel.
- (2) Within five days after the receipt of the request for final offer resolution, with the accompanying designation of a member of a resolution panel, the other party shall name a person who resides in the school district to serve as a member of the panel.
- (3) Within five days thereafter, the two designated members of the panel shall attempt to select a third person from the surrounding area to serve as the panel's chairperson. If the panel members have not agreed upon the selection of the chairperson within five days, the panel may select a person to serve as chairperson from a list provided by the federal mediation and conciliation service. If within five days the panel members have not agreed to the selection of a person from the federal mediation and conciliation service list, the panel shall notify the

superintendent of public instruction and ask that the superintendent provide them with the names of five persons who have given notice of their willingness to serve as panel chairpersons. The superintendent of public instruction shall compile a list of the names of at least nine persons who are qualified to serve as chairpersons in this capacity. The original list of potential chairpersons shall be compiled by having the governor, the attorney general, and the superintendent of public instruction each provide the names of three chairpersons who are experienced in educational activities and who have given notice of their willingness to serve as panel chairpersons. The original selections by the governor, the attorney general, and the superintendent of public instruction shall remain on the list for three years, two years, and one year respectively. The successors shall remain on the list for three years each, except that any person chosen to fill an open slot shall remain on the list only for the remaining time period of the potential chairperson whose name is being removed from the list. Upon receiving notification from one or both of the panel members of the need for a panel chairperson, the superintendent of public instruction shall provide to the panel members a list of five names of chairpersons, chosen at random by the superintendent, to serve as the chairperson of the resolution panel. One panel member determined by lot shall strike one name from the list. The other panel member shall then strike one name. This process must be repeated until one name remains. The person whose name remains is the panel chairperson.

- (4) Within ten days following the selection of the chairperson, the school board and the representative organization shall submit to the panel their respective final offers on all matters not yet agreed upon and shall indicate those items which have been the subject of previous agreement and are thereby excluded from the resolution process.
- (5) The panel, within twenty days, shall convene a hearing with the school board and the representative organization and after consideration of the evidence and arguments, shall within twenty days of the hearing issue an order which adopts the entire final offer of either party and is final and binding upon the parties.
- (6) In reaching a decision, the panel shall give due consideration to the statutory rights and obligations of the school board to efficiently manage and conduct its operations within the legal limitations surrounding the financing of such operations. The panel may not consider any matter or issue not submitted under paragraph 4 above.
- (7) The hearing must be held within the subject school district, unless another location is selected by agreement of the parties.

- (8) Upon issuing an order involving dispute, the panel shall transmit the order and any written decision explaining the order to the superintendent of public instruction and to the school board and the representative organization. If any issues submitted to the panel are settled voluntarily before the panel issues its decision, notice of the settlement must be made by the panel in the report issued to the superintendent of public instruction.
- (9) After issuance of the order, the party shall execute a contract, pursuant to subsection 2 of section 15-38.1-12, incorporating the agreements of the parties and the terms of the panel's order. In addition, the parties to the resolution process may, at any time prior to or after issuance of an order of the panel, agree and settle upon wages, salaries, benefits, hours, tenure, reimbursable expenses, or other terms and conditions of employment regardless of the order. The parties shall, if so agreeing and settling, execute a written contract pursuant to subsection 2 of section 15-38.1-12.
- (10) The cost for mediation services must be borne equally by the parties. The superintendent of public instruction shall determine the cost of the final offer of resolution process, including per diem compensation, and other costs and these costs must be borne equally by the parties, except that each party is responsible for the costs of its panel member and its witnesses.
- (11) All meetings held pursuant to this section are subject to the open meetings laws of this state.
- (12) The final offer resolution procedure set forth in this section may be used only for impasses involving salaries and other monetary fringe benefits.
- (13) Notwithstanding any other provision of law, either party may request final offer resolution at any time after each party has presented its initial proposal.

SECTION 2. REPEAL. Sections 15-38.1-03, 15-38.1-04, 15-38.1-05, and 15-38.1-06 of the North Dakota Century Code are repealed.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 187

SENATE BILL NO. 2196  
 (Committee on Education)  
 (At the request of the Teachers' Fund for Retirement)

### TFFR BENEFITS, ASSESSMENTS, AND AUDITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to federal limitations on retirement benefits under the teachers' fund for retirement; to amend and reenact subsection 9 of section 15-39.1-04, subsection 2 of section 15-39.1-09, section 15-39.1-22, and subsections 2 and 7 of section 15-39.1-24 of the North Dakota Century Code, relating to the definition of salary, employer payment of member assessments, an annual audit under the teachers' fund for retirement, and military service credit for members; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 15-39.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, and administrative, and extracurricular services during a school year as reported as salary on the member's federal income tax withholding statements plus the value of any fringe benefits selected at the member's option in lieu of monetary remuneration any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave or, personal leave, vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary, workers' compensation benefits, disability insurance premiums or benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer entered into within sixty months before retirement.

SECTION 2. AMENDMENT. Subsection 2 of section 15-39.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid shall be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are

paid by the employer, they shall be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they shall not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If teacher contributions are paid by the employer, they shall be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection shall be exercised in accordance with rules adopted by the board.

SECTION 3. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Benefit limitations. Benefits with respect to a member participating under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] for governmental plans. This section does not constitute an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)].

SECTION 4. AMENDMENT. Section 15-39.1-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-22. Annual report of board audit. The board shall annually report conduct an annual audit of the fund for the fiscal year ending the preceding June thirtieth. The board shall provide a copy of the report to each member and the governor.

SECTION 5. AMENDMENT. Subsections 2 and 7 of section 15-39.1-24 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Any teacher who has received an honorable discharge from military service of the United States of America may receive credit for no more than four years of active service, upon filing application and proof with the board and subject to the terms of this chapter upon teaching one year in North Dakota subsequent to military service. Members qualified to receive military credit under the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] shall only pay member assessments plus interest pursuant to rules adopted by the board. For those individuals becoming eligible to receive military credit under the Veterans' Reemployment Rights Act after June 30, 1991, the employer shall pay the required employer contribution for military service.
7. Except as provided in ~~subsection~~ subsections 2 and 5, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required

payment. In all cases, the purchase cost must be on an actuarial equivalent basis.

**SECTION 6. APPLICATION OF ACT.** Sections 1 and 3 of this Act apply to benefits payable after June 30, 1991.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 188

HOUSE BILL NO. 1316  
(Martinson)

### TFFR BOARD OF TRUSTEES MEMBERS

AN ACT to amend and reenact section 15-39.1-05 of the North Dakota Century Code, relating to the appointment of members of the board of trustees of the teachers' fund for retirement; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-39.1-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-05. Management of fund. ~~The fund must be managed by a~~ A board of trustees, ~~which consists consisting~~ of the state treasurer, the superintendent of public instruction, and three persons appointed by the governor, shall manage the fund. One of the appointees must be a full-time school administrator chosen from a list of three nominees submitted to the governor by the North Dakota council of school administrators, one of the appointees must be actively employed as a full-time classroom teacher or as a full-time school counselor chosen from a list of three nominees submitted to the governor by the North Dakota education association, and one of the appointees must be a retired member of the fund chosen from a list of three nominees submitted to the governor by the North Dakota retired teachers association. A majority of the board must at all times consist of persons who are members of the fund. The term of the office of the appointees is three years with those terms fixed to terminate on June thirtieth of alternate years. The term of each appointee commences on July first next succeeding the appointee's appointment.

SECTION 2. APPLICATION OF ACT. This Act applies to gubernatorial appointments made after the effective date of this Act as the terms of office of the current appointees to the board expire.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 189

SENATE BILL NO. 2197  
(Committee on Education)  
(At the request of the Teachers' Fund for Retirement)

### TFFR BENEFITS AND PARTIAL SERVICE

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 2 of section 15-39.1-10 and sections 15-39.1-12.1 and 15-39.2-01 of the North Dakota Century Code, relating to computation of benefits, partial service retirement, and the benefit formula for college teachers under the teachers' fund for retirement; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-39.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~two hundred seventy five thousandths~~ thirty-nine hundredths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustments. An individual who on June 30, 1991, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive three dollars per month multiplied by the individual's number of years of credited service for individuals who retired before 1980, two dollars per month multiplied by the individual's number of years of credited service for individuals who retired after 1979 and before 1984, or one dollar per month multiplied by the individual's number of years of credited service for individuals who retired after 1983 and who retire before July 1, 1991, or an increase of ten percent in the individual's currently payable annuity, whichever is greater. The minimum monthly increase under this section is five dollars and the maximum monthly increase under this section is seventy-five dollars.

SECTION 3. AMENDMENT. Section 15-39.1-12.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:



15-39.1-12.1. Partial service retirement. A full-time teacher, except for an elected official or a member of the alternate retirement program under subsection 13 of section 15-10-17, who is ~~sixty-two~~ fifty-five or more years of age and has ~~ten~~ five or more years of service credit may negotiate a partial service retirement agreement with the teacher's employer which results in not less than a twenty percent reduction and not more than a sixty percent reduction in the teacher's full-time employment. The board shall pay a reduced retirement benefit to the teacher after the employer certifies to the board that a partial service retirement agreement has been approved by the teacher and the teacher's employer. The reduced retirement benefit must equal the full retirement benefit the teacher is eligible to receive at the time the partial service retirement agreement becomes effective less the percentage of full-time employment the teacher is working under the partial service retirement agreement. The board must disapprove any partial service retirement agreement that does not provide for proportionately reduced compensation and, except for any health and dental insurance benefits provided by the employer, other benefits customarily provided to teachers such as vacation and sick leave. A teacher subject to a partial service retirement agreement may further reduce worktime only once each school fiscal year and may elect only once in every five years after initial entry into the program to increase worktime to another less than full-time schedule. The employer shall certify to the board any amendments or changes to the partial service retirement agreement. A teacher who reduces worktime under this section must be given priority by the employer for return to a full-time position to the extent full-time work is available. A teacher subject to a partial service retirement agreement is not considered retired until the teacher becomes fully retired. Increased compensation and receipt of additional service credit by a teacher while subject to a partial service retirement agreement do not affect a partial service retirement benefit as initially determined by the board. An employer and a teacher subject to a partial service retirement agreement shall pay their respective required assessments under section 15-39.1-09 based on the full-time salary that would have been paid if the teacher had not entered into a partial service retirement agreement. A teacher subject to a partial service retirement agreement must receive at the time of full retirement a retirement benefit based on total service credit earned, including that earned during partial service retirement. The full retirement benefit must be based on the final average salary, as determined by the board, the teacher would have received if full-time employment had been maintained during the period the teacher was subject to a partial service retirement agreement. A teacher subject to a partial service retirement agreement may not elect a joint and survivor benefit payment option under section 15-39.1-16 to be effective while subject to a partial service retirement agreement. Disability and death benefits provided under this chapter may not be reduced under this section if a teacher dies while subject to a partial service retirement agreement.

SECTION 4. AMENDMENT. Section 15-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

15-39.2-01. Retired teachers - Election of coverage - Eligibility - Limitation. Notwithstanding the provisions of chapter 15-39.1, any person who retired from teaching under the teachers' insurance and retirement fund prior to July 1, 1971, who had ten or more years of teaching credit under that program ~~shall be~~ is entitled to elect to qualify for benefits under the teachers' fund for retirement by complying with the provisions of this chapter. A college teacher who retired from teaching after July 1, 1971, may, notwithstanding the provisions of section 15-39.1-25, elect to receive

benefits in accordance with chapter 15-39.1 and section 15-39.2-05. The amount of monthly benefits to which an annuitant electing to come under the 1971 law ~~shall be~~ is entitled until death ~~shall be~~ is equal to one and one-half percent of the monthly salary of the annuitant for the last school year for each year of service of ~~such~~ that annuitant. Monthly salary within the meaning of this provision ~~shall be~~ is deemed to be an amount equal to one-twelfth of the annual salary of the teacher. If for any reason the earnings of the teacher for the last year of teaching are shown to have been nonrepresentative of ~~his~~ the teacher's typical earnings, the board shall readjust the credit to be allowed for past years of service to the last year of typical earnings. As used in this section, "college teacher" means a retired teacher who is entitled to receive an annuity through the teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF) as a result of having participated in the North Dakota state board of higher education TIAA-CREF retirement plan for North Dakota state institutions of higher education.

SECTION 5. APPLICATION OF ACT. Section 1 of this Act applies only to individuals who begin receiving monthly benefits from the fund under chapter 15-39.1 after June 30, 1991, and applies to those benefits payable after June 30, 1991. Sections 2 and 4 of this Act apply to benefits payable after June 30, 1991.

Approved April 3, 1991  
Filed April 3, 1991

## CHAPTER 190

HOUSE BILL NO. 1458  
(Ritter)

### UNACCREDITED SCHOOL FOUNDATION AID

AN ACT to amend and reenact section 15-40.1-06 of the North Dakota Century Code, relating to support levels for unaccredited elementary schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-40.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-06. Declaration of legislative intent - Educational support per pupil - School district equalization factor - Limitations.

1. It is the intent of the legislative assembly, not considering any separate and supplemental payments as may be provided by law, to support elementary and secondary education in this state from state funds based on the educational cost per pupil. In determining the educational cost per pupil, the following criteria shall not be used:
  - a. Expenditures for capital outlay for buildings and sites, or debt service.
  - b. Expenditures from school activities and school lunch programs.
  - c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2.
  - a. The educational support per pupil during the first year of the 1989-91 biennium must be one thousand five hundred twenty-five dollars and for the second year of the biennium the educational support per pupil must be one thousand five hundred forty-five dollars and is the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.
  - b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.
  - c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be

\* NOTE: Section 15-40.1-06 was also amended by section 1 of Senate Bill No. 2113, chapter 191.

supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per pupil established in subdivision a, which is the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of pupils in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per pupil in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per-pupil payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

- d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the 1992-93 school year or for the first year that they become unaccredited in the amount of the educational support per pupil established in subdivision a, which is the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of pupils in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per-pupil payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.
3. In determining the amount of payment due school districts for per-pupil aid under this section, the product of twenty-one mills for the 1989-90 school year and twenty-two mills for each year thereafter times the latest available net assessed and equalized valuation of property of the school district must be subtracted from the amount of such aid.
4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:
- a. Annual average daily membership report.
  - b. Annual school district financial report.
  - c. The September tenth fall enrollment report.
  - d. The personnel report forms for certified and noncertified employees.
5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

Approved March 20, 1991

Filed March 21, 1991

## CHAPTER 191

### SENATE BILL NO. 2113 (Committee on Education)

(At the request of the Office of Management and Budget)

## FOUNDATION AID LEVELS

AN ACT to amend and reenact subdivision a of subsection 2 of section 15-40.1-06 of the North Dakota Century Code, relating to the per-pupil payment for the 1991-93 biennium; and to provide for contingent additional per-pupil foundation aid payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 15-40.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. The educational support per pupil during the first year of the ~~1989-91~~ 1991-93 biennium must be one thousand five hundred ~~twenty-five~~ fifty-two dollars and for the second year of the biennium the educational support per-pupil must be one thousand ~~five~~ six hundred ~~forty-five~~ eight dollars and is the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.

SECTION 2. CONTINGENT SEPARATE AND ADDITIONAL PER-PUPIL PAYMENT. The superintendent of public instruction shall distribute a separate and additional per-pupil payment from any unspent amount appropriated to the grants - foundation aid program for the biennium beginning July 1, 1991, and ending June 30, 1993, in the May 1, 1993, foundation aid payment to schools. Any payment made under this section must be on a weighted basis to be determined according to chapter 15-40.1.

SECTION 3. LEGISLATIVE INTENT - STATE SCHOOL AID - LIMITED ENROLLMENT. It is the intent of the legislative assembly that beginning with the 2000-2001 school year, any school district that has twenty-five or fewer students enrolled in grades nine through twelve and that has not attempted to restructure or enter into a cooperative agreement with another school district, including a reciprocal agreement for attending an out-of-state school, is not eligible to receive any state aid for students enrolled in grades nine through twelve. If it is not feasible for a school district to restructure or enter into a cooperative agreement, the school district is eligible for state aid.

Approved April 16, 1991  
Filed April 18, 1991

\* NOTE: Section 15-40.1-06 was also amended by section 1 of House Bill No. 1458, chapter 190.

## CHAPTER 192

SENATE BILL NO. 2169  
 (Committee on Education)  
 (At the request of the Superintendent of Public Instruction)

### SCHOOLBUS TRANSPORTATION AID

AN ACT to amend and reenact section 15-40.1-16 of the North Dakota Century Code, relating to schoolbus transportation aid payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-16. Aid for transportation. There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

1. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to twenty-five cents per mile [1.61 kilometers] during each year of the ~~1989-91~~ 1991-93 biennium for vehicles having a capacity of nine or fewer pupils and ~~sixty-eight~~ sixty-seven cents per mile [1.61 kilometers] for each year of the ~~1989-91~~ 1991-93 biennium for schoolbuses having a capacity of ten or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of ten or more pupils are entitled to an amount equal to ~~twenty-five~~ twenty-eight cents per day for each public school pupil living outside the city limits who is transported in such buses.
2. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to ~~twelve~~ seventeen and one-half cents per pupil per one-way trip. However, no payment shall be made under this subsection for a student who rode on a vehicle for which payments are claimed under subsection 1.

The mileage payments provided for in this section shall be made to each school district for transporting pupils to and from school. Such payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to the compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such manner and in such detail as the superintendent of public instruction may require at the time an application is made for payments provided under this section. ~~The superintendent of public instruction shall do an onsite audit of the books and records, regarding transportation cost, pupils transported and miles traveled, of at least ten school districts each fiscal year to verify compliance with section 15-40.1-16.~~

Approved April 11, 1991  
 Filed April 12, 1991

## CHAPTER 193

HOUSE BILL NO. 1359  
(Kunkel, Muhs)

### TRANSPORTATION AID FOR CERTAIN STUDENTS

AN ACT to amend and reenact section 15-40.1-16.1 of the North Dakota Century Code, relating to transportation aid for pupils enrolled in area vocational and technology centers and multidistrict special education programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-16.1. Transportation aid for certain vocational education and special education programs. There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. Such amount must be the same amount for mileage and per day as is provided in subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.
2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

School districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section which are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 194

HOUSE BILL NO. 1405  
(Representatives Dalrymple, Carlson)  
(Senators Graba, Peterson)

### HIGH SCHOOL CURRICULA

AN ACT to amend and reenact section 15-41-24 of the North Dakota Century Code, relating to high school curricula.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-41-24 of the North Dakota Century Code is amended and reenacted as follows:

15-41-24. High schools - Minimum curriculum. The following units of study shall be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education shall include home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board of vocational education.

Approved March 25, 1991  
Filed March 26, 1991



## CHAPTER 195

HOUSE BILL NO. 1199

(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### TEXTBOOK SALES

AN ACT to amend and reenact sections 15-43-01, 15-43-02, and 15-43-03 of the North Dakota Century Code, relating to conditions for sales of textbooks to school districts; and to repeal sections 15-43-04 and 15-43-06 of the North Dakota Century Code, relating to textbook lists and inducements to purchase textbooks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-43-01 of the North Dakota Century Code is amended and reenacted as follows:

15-43-01. Textbooks - Statement and bond required as a condition to sale. Before any person, firm, or corporation shall offer for selection, adoption, contract, sale, or exchange any school textbook or book for use in the schools of this state, such person, firm, or corporation shall:

1. File ~~a copy of the book~~ in the office of the superintendent of public instruction ~~with~~ a sworn statement setting forth the published list price and the lowest wholesale price at which ~~the book is~~ books are sold to any school board, school corporation, or school commission anywhere in the United States, and the lowest price at which the book is exchanged for an old book in the same subject of like grade and kind but of a different series, based upon three-year and five-year contract periods.
2. File with the superintendent of public instruction a bond running to the state of North Dakota, with a surety company authorized to do business in this state as surety thereon, in a penal sum of not less than two thousand dollars nor more than ten thousand dollars, the sum to be determined by the superintendent, conditioned as follows:
  - a. That any book listed in the statement, and in any other statement subsequently filed by the person, firm, or corporation, shall be supplied by the publisher to any school district in the state of North Dakota at the price and terms contained in the statement.
  - b. That the price and terms filed are to be reduced automatically in North Dakota whenever reductions are made by the publisher elsewhere in the United States so that at no time shall any book so filed and listed be sold to district school boards, or to their authorized purchasing agents, at a higher price than

is received for the book by the publisher elsewhere in the United States.

- ~~c.~~ That all textbooks offered for sale, adoption, contract, or exchange by the publisher in the state of North Dakota shall be equal in quality to those deposited in the office of the superintendent of public instruction as to paper, binding, printing, illustrations, subject matter, and all particulars that may affect the value of the textbooks.
- ~~d.~~ c. That in case an abridged or special edition of any book shall be prepared, the person, firm, or corporation manufacturing the same shall sell the special edition to district school boards in this state, or to their authorized purchasing agents, at the same wholesale price as that for which the book is sold elsewhere.
- ~~e.~~ d. That such person, firm, or corporation will not enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of school textbooks.

SECTION 2. AMENDMENT. Section 15-43-02 of the North Dakota Century Code is amended and reenacted as follows:

15-43-02. Approval of bond for sale of textbooks - License by superintendent of public instruction. The bond described in section 15-43-01 shall be approved as to form by the attorney general, and upon approval, the person, firm, or corporation filing such the bond shall may be licensed by the superintendent of public instruction to sell in this state the book or books of which copies have been as set forth in the published list price filed in the office of the superintendent.

SECTION 3. AMENDMENT. Section 15-43-03 of the North Dakota Century Code is amended and reenacted as follows:

15-43-03. Breach of conditions in bond - Proceedings to collect on bond. If any person, firm, or corporation shall supply, supplies to any district school board, or any purchasing agent thereof, books that are inferior to the samples on file with the superintendent of public instruction, or shall charge at a higher price than that filed or than is in the published list price filed in the office of the superintendent of public instruction or charged elsewhere in the United States, the county superintendent of schools, on written complaint filed with him by the school board, shall inform the superintendent of public instruction of the breach of the terms of the bond. The superintendent shall notify the person, firm, or corporation of the complaint, and if the entity disregards the notice is disregarded, or if such person, firm, or corporation fails to comply with the terms of the agreement filed with the superintendent, the bond shall must be forfeited, and the attorney general, on written request of the superintendent of public instruction, shall proceed to collect the full amount thereof.

SECTION 4. REPEAL. Sections 15-43-04 and 15-43-06 of the North Dakota Century Code are repealed.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 196

SENATE BILL NO. 2143  
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### HOMELESS CHILDREN EDUCATION

AN ACT to provide for the education of homeless children and the adoption of administrative rules by the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Education of homeless children - Payment of costs - Administrative rules.

1. Homeless children in this state are entitled to a free public school education in the same manner and comparable to that of other public school pupils, in accordance with the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77; 101 Stat. 525; 42 U.S.C. 11431, et seq.].
2. For the purposes of this section, "homeless child" means a homeless individual as described in the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77, § 103(a); 101 Stat. 485; 42 U.S.C. 11302] and as defined in rules adopted by the superintendent of public instruction.
3. A school district shall allow a nonresident homeless child to attend school.
4. The superintendent of public instruction shall adopt and have published administrative rules under chapter 28-32 to implement the provisions of this section, including provisions for the proper school placement of homeless children according to the best interests of the child.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 197

HOUSE BILL NO. 1120

(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### SCHOOL DISTRICT ELECTION ABSENT VOTERS

AN ACT to amend and reenact section 15-47-06 of the North Dakota Century Code, relating to use of absent voters' ballots in school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-47-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall proceed to count and canvass the votes for each office and the person receiving the highest number of votes for an office must be declared elected. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by said candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by said candidates. A record of the proceedings must be made in the records of the business manager of the district. Returns must be made to the school board showing the number of votes cast for each person for any office, and such returns must be signed by the judges and clerks of election and filed with the business manager of the district within two days thereafter. The school board shall canvass all election returns and shall declare the result of any election within three days thereafter, and the result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots ~~may~~ must be used in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

Approved March 25, 1991  
Filed March 26, 1991

\* NOTE: Section 15-47-06 was also amended by section 2 of Senate Bill No. 2299, chapter 176, and by section 1 of Senate Bill No. 2506, chapter 212.

## CHAPTER 198

HOUSE BILL NO. 1249  
(Representatives A. Olson, Myrdal)  
(Senator Vosper)

### TEACHER DISCHARGE NOTICE

AN ACT to amend and reenact sections 15-47-26 and 15-47-38 of the North Dakota Century Code, relating to the definition of teacher and discharge of teachers; and to repeal section 15-47-38.1 of the North Dakota Century Code, relating to evaluation and renewal of first year teachers and superintendents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-26. "Teacher" defined. The term "teacher", as used in sections 15-47-27 and 15-47-28, must be construed to include all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. The term "teacher", as used in section 15-47-38, must be construed to include all teachers, and principals, superintendents, assistant superintendents, and chief administrators of multidistrict special education units and area vocational and technology centers in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. For purposes of the sections above referenced, the term "teacher" does not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

\* SECTION 2. AMENDMENT. Section 15-47-38 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-38. Legislative intent in employment of teachers - Notification of discharge or failure to renew - Hearing.

1. The legislative assembly, in recognition of the value of good employer-employee relationships between school boards of this state and the teachers employed in the school systems, the need to recruit and retain qualified teachers in this state, and further in recognition of the many intangibles in evaluating the performance of individual members of the teaching profession, urges that each school board of this state ensure through formally adopted policies, that channels of communication exist between the board, supervisory personnel, and teachers employed within its school

\* NOTE: Section 15-47-38 was also amended by section 2 of House Bill No. 1194, chapter 342.

system. In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teachers' contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers, which stature and reputation were acquired only after the expenditure of substantial time and money in obtaining the necessary qualifications for such profession and in years of practicing the profession of teaching; and that in all decisions of school boards relating to discharge or refusal to renew contracts, all actions of the board be taken with consideration and dignity, giving the maximum consideration to basic fairness and decency.

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher shall be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher shall also be informed in writing of his the teacher's right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons shall be sufficient to justify the contemplated action of the board and shall not be frivolous or arbitrary. At the meeting with the board, if the teacher has informed the board in writing at least two days prior thereto that he the teacher will contest the charges brought against him the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who shall be subject to cross-examination by the teacher or his the teacher's representative. A witness, if a minor, shall be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce such witnesses as may be necessary to refute the charges, which witnesses shall be subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, and appeals to the supreme court shall be conducted in accordance with the provisions of sections 28-32-06, 28-32-07, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-13, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, 28-32-19, 28-32-20, and 28-32-21. The meeting shall be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it shall be open to other persons or the public. The teacher may be represented at the meeting by two representatives of his the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and, unless the subject of the contemplated discharge, the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. If the teacher so requests he, the teacher shall be granted a continuance of not to exceed seven days by the board unless for good cause otherwise shown. No cause of action for

libel or slander shall lie for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

3. A school board may dismiss a teacher, effective immediately, for any of the following causes:
  - a. Immoral conduct, insubordination, or conviction of a felony.
  - b. Conduct unbecoming a teacher which requires the immediate removal of a teacher from ~~his~~ the teacher's classroom duties.
  - c. Failure without justifiable cause to perform contracted duties.
  - d. Gross inefficiency which the teacher has failed to correct after reasonable written notice.
  - e. Continuing physical or mental disability which renders ~~him~~ the teacher unfit or unable to perform ~~his~~ the teacher's duties as a teacher.

A school board dismissing a teacher for cause under this subsection shall report the dismissal to the teachers' professional practices commission.

4. The school board by unanimous vote may suspend the teacher from regular duty if such action is deemed desirable during the process of determining if cause for dismissal exists. If, upon final decision, the teacher is dismissed, the board may in its discretion determine the teacher's salary or compensation as of the date of suspension. If the final decision is favorable to the teacher, there shall be no abatement of salary or compensation.
5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher must be informed in writing of the time, which may not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher must also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. Each district shall have an established system through which written evaluations are prepared for every teacher employed by the district as provided in section 15-47-27. The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher ~~as a teacher~~ or the necessities of the district such as lack of funds calling for a reduction in the ~~teaching~~ staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the

reasons with written or oral evidence presented at the meeting, unless the administrator is the subject of the contemplated nonrenewal, in which case the board shall substantiate the reasons with written or oral evidence presented at the meeting. All witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the reasons and determine whether or not the administrator has, in fact, substantiated the reasons evidence presented. If the board finds that the reasons for nonrenewal have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of ~~his~~ the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and, unless the subject of the contemplated nonrenewal, the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the meeting, if the teacher so requests, ~~he~~ the teacher must be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all parties. Final notice of the determination not to renew a contract must be given in writing by May first as provided in section 15-47-27.

6. No teacher may be discharged and no school board may refuse to renew a teacher's contract under this section based solely upon an investigation of alleged child abuse or neglect made under section 50-25.1-05.1 in which a determination was made that no probable cause existed to believe that the child abuse or neglect was indicated, or in which a determination was made that probable cause did exist to believe that child abuse or neglect was indicated but a decision relating to the alleged abuse or neglect has not been made by a court of competent jurisdiction. If a school board is notified that a finding of probable cause is made, this subsection does not prevent the school board from moving to suspend the teacher under the provisions of subsection 4.

\* SECTION 3. REPEAL. Section 15-47-38.1 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved March 20, 1991  
 Filed March 21, 1991

\* NOTE: Section 15-47-38.1 was amended by section 16 of House Bill No. 1209, chapter 165.



## CHAPTER 199

SENATE BILL NO. 2106  
(Committee on Education)  
(At the request of the Superintendent of Public Instruction)

### TEACHER CERTIFICATION TIME

AN ACT to amend and reenact subsections 1 and 2 of section 15-47-46 of the North Dakota Century Code, relating to the attainment of certification to teach kindergarten, elementary school, or middle school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 15-47-46 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Except as provided in subsections 2 through 4, all teachers teaching kindergarten through grade eight must hold a teaching certificate and:
  - a. A minimum of a kindergarten endorsement to teach kindergarten; or
  - b. A major, minor, or endorsement in elementary education to teach elementary education in grades one through eight; or
  - c. An endorsement in kindergarten or elementary education from the superintendent of public instruction attained prior to or within two years of the assignment to teach kindergarten or elementary education. An endorsement may be obtained by completing teaching requirements and a minimum number of credit hours in courses prescribed by the superintendent of public instruction.
2. A teacher who holds a teaching certificate and a major or an endorsement in middle school education attained prior to or within two years of the assignment to teach middle school may teach grades five through eight.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 200

SENATE BILL NO. 2566  
(Senator Tennefos)  
(Representative Gorman)

### FARGO SCHOOL LEVY ELECTION

AN ACT to create and enact a new subsection to section 15-51-11 of the North Dakota Century Code, relating to power of the city of Fargo board of education to levy taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-51-11 of the North Dakota Century Code is created and enacted as follows:

The question of authorizing or discontinuing the unlimited taxing authority of the school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon filing with the school board of a petition containing signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for the district for the most recent year the census was taken. However, the approval of discontinuing the unlimited taxing authority does not affect the tax levy in the calendar year in which the election is held. In addition, the minimum levy may not be less than the levy that was in force at the time of the election. The district may increase its levy in accordance with chapter 57-15-01. If the district experiences growing enrollment, the district may increase the levy by an amount equal to the amount levied the preceding year per pupil times the number of additional pupils enrolled during the new year.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 201

HOUSE BILL NO. 1090  
(Committee on Education)  
(At the request of the Superintendent of Public Instruction)

### HANDICAPPED CHILD DEFINITION

AN ACT to amend and reenact subsection 3 of section 15-59-01 of the North Dakota Century Code, relating to the definition of the term "handicapped child".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 15-59-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually handicapped, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, ~~or~~ otherwise health impaired, autistic, or traumatic brain injured who by reason thereof requires special education and related services or who has been excused from attending or participating in special education pursuant to subsection 4 of section 15-34.1-03.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 202

SENATE BILL NO. 2179  
(Committee on Education)  
(At the request of the Superintendent of Public Instruction)

### **SPECIAL EDUCATION PROGRAM FUNDING INTENT**

AN ACT to amend and reenact section 15-59-02.1 of the North Dakota Century Code, relating to legislative intent and special education cost sharing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-59-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of handicapped children in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a handicapped child to benefit from special education.

The school administrator or his appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the handicapped student, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each handicapped student placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly believes that when money is distributed to a school district for special education personnel, the department of public instruction should give consideration to the units of services provided by the district, the district's special education program costs, and the district's special education program needs.

The legislative assembly recognizes that a handicapped student whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the handicapping

condition. All summer programs attended by these students must have approval of the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of handicapped students who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All handicapped children have the right to a free appropriate education" means that all handicapped students have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of nonhandicapped children. Parents will assume such costs for a handicapped child as they would if the child was not handicapped. Personal items, including, but not limited to, hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a nonhandicapped child, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related handicapping condition or other required related services which results in the child's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a handicapped student resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include, but not be limited to, a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by a handicapped student's parent or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the state department of health and consolidated laboratories human services has authority under chapter 25-16 to provide early intervention services to meet the needs of handicapped children ages zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 203

HOUSE BILL NO. 1578  
(Representatives Gilmore, Gorder, Oban)  
(Senators Heinrich, Lips, Peterson)

### **HANDICAPPED EDUCATION RIGHTS ENFORCEMENT**

AN ACT to create and enact a new section to chapter 15-59 of the North Dakota Century Code, relating to payment of attorneys' fees to the parent or guardian of a handicapped child or a handicapped adult in certain cases; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-59 of the North Dakota Century Code is created and enacted as follows:

Enforcement of right to education - Attorneys' fees. Each parent or guardian of a handicapped child as defined in subsection 3 of section 15-59-01, or a handicapped adult between the ages of eighteen and twenty-one is entitled to enforce that handicapped child's or handicapped adult's right to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute. In any administrative or judicial proceeding to enforce that right, the court may, in its discretion, award reasonable attorneys' fees and costs to a parent, guardian, or handicapped adult who prevails in that proceeding. However, no attorney's fees or costs may be awarded for services rendered or costs incurred before the time when the parent, guardian, or handicapped adult submitted a written request to the appropriate school administrator or director of special education, for the relief sought and obtained in that proceeding.

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

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 204

SENATE BILL NO. 2412  
(Senator Goetz)  
(Representative Gates)

### SCHOOL CONSTRUCTION FUND

AN ACT to amend and reenact sections 15-60-01 and 15-60-03 of the North Dakota Century Code, relating to the school construction fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-60-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-60-01. Definitions. As used or referred to in this chapter, unless the context clearly indicates otherwise:

1. "Board" means the state board of public school education.
2. "Construction" means acquisition and construction, and the term "to construct" means to acquire and to construct in such manner as may be deemed desirable.
3. "Department" means the department of public instruction.
4. "Fund" means the state school construction fund created by this chapter.
5. "Improvement" means extension, enlargement, and improvement, and the term "to improve" means to extend, to enlarge, and to improve in such manner as may be deemed desirable.
6. "Project" means any structure, facility, or undertaking including a technological undertaking which the board is authorized to construct or improve, under this chapter.

SECTION 2. AMENDMENT. Section 15-60-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-60-03. Purposes and general powers.

1. There is established a state school construction fund to be maintained by the board at the Bank of North Dakota. The board may use the fund to buydown or reduce the interest paid by a school district on the Bank's portion of the construction loan. The interest buydown program under this section must be implemented under rules adopted by the board.
2. The Bank of North Dakota shall at no time enter into any contract with a school district under the provisions of this chapter, unless

such school district is at that time annually levying a sufficient mill levy which the board has determined will provide for repayment of the contracted loan within twenty years after the initial payment from the Bank of North Dakota to the school district, but a school district shall not borrow more than thirty percent of the taxable valuation of the district or five million dollars from the Bank and shall not be permitted to levy less than ten mills for the maintenance of a building fund. The loan contracted for by the school district from the Bank must be repaid by the school district together with two and one-half percent interest per annum. The interest buydown fund must be used by the board to cover the difference between the Bank's current loan rate and the rate of two and one-half percent interest per annum. The levy required by this section for repayment must be maintained over the life of the contract with the Bank, ~~and the~~. To submit a qualifying loan application, a school district must have at the time of the loan application an existing indebtedness to the maximum limit permitted by law. In determining whether a school district has an existing indebtedness to the maximum limit permitted by law for purposes of this section, the value of taxable property means twice the taxable value of all taxable property in the school district equal to fifteen percent or more of the taxable valuation of all taxable property in that school district, except that this requirement does not pertain to consortiums, to reorganized districts, and when two or more districts engage in joint technological undertakings.

3. All contracts between the Bank and school districts shall be conditioned upon the preparation of general plans for the orderly development of improved attendance areas and administrative units and for the improved housing of the public schools of the state. These plans shall be prepared cooperatively by local, county, and state school authorities, in accordance with standards and regulations prescribed by the department. The department shall have authority and its duty shall be to review all construction projects to determine:
  - a. The extent to which they conform to state plans.
  - b. The amount of improvement to be brought about in attendance areas and administrative units.
  - c. The usefulness and adequacy of the proposed building for classroom purposes with respect to design, location, safety, comfort, and convenience.
  - d. The ability of the local school district or districts to amortize the cost of construction and to defray the cost of operation and maintenance.
4. No contract shall be executed between the Bank and school district without the specific written approval of the department.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 205

HOUSE BILL NO. 1128  
(Committee on Finance and Taxation)  
(At the request of the Bank of North Dakota)

### STUDENT LOAN PROGRAM EXPENDITURES

AN ACT to amend and reenact section 15-62.1-01 and subsection 2 of section 15-62.1-02 of the North Dakota Century Code, relating to the designation of the agency that administers state guarantee loan programs and authorization of expenditure of guarantee moneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-01. Guarantee student loan programs - Administration - Advisory board. The Bank of North Dakota, hereinafter called the "agency", shall be the state agency designated to administer state guarantee loan programs, as provided in this chapter. The advisory board of directors to the Bank of North Dakota appointed pursuant to chapter 6-09.1 shall act in an advisory capacity concerning the programs. The agency, upon recommendation of the advisory board and subject to approval of the industrial commission, shall expend moneys received and from the interest earned on the principal balance in the reserve funds established pursuant to this chapter as may be necessary to implement and administer the programs. The term "student" includes a parent borrower under this chapter and the term "coinsurance" includes reinsurance.

SECTION 2. AMENDMENT. Subsection 2 of section 15-62.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To take, hold, expend, and administer, on behalf of the state from any source any real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the agency shall be a general obligation of the state of North Dakota, nor shall be payable out of any moneys except those made available to the agency under this chapter.

Approved March 7, 1991  
Filed March 7, 1991

# ELECTIONS

## CHAPTER 206

SENATE BILL NO. 2519  
(Kelsh)

### INITIATIVE, REFERENDUM, AND RECALL PETITIONS

AN ACT to create and enact a new subsection to section 16.1-01-09 of the North Dakota Century Code, relating to initiative, referendum, and recall petitions; and to amend and reenact subsection 1 of section 16.1-01-09 of the North Dakota Century Code, relating to initiative, referendum, and recall petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 16.1-01-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure, the printed name, signature, and address of the committee member, and notarization of the signature.

Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement which must fairly represent the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.

The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days.

SECTION 2. A new subsection to section 16.1-01-09 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.

Approved April 3, 1991  
Filed April 4, 1991

**CHAPTER 207**

SENATE BILL NO. 2035  
(Legislative Council)  
(Interim Elections Committee)

**INITIATIVE, REFERENDUM, AND RECALL  
PETITION FILING**

AN ACT to create and enact a new subsection to section 16.1-01-09 of the North Dakota Century Code, relating to the filing of initiative, referendum, and recall petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 16.1-01-09 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

A petition must be submitted to the secretary of state by five p.m. on the day designated as the deadline for submitting the petition.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 208

HOUSE BILL NO. 1256  
(Representatives Meyer, DeWitz, Kerzman)  
(Senator Krauter)

### SUBDIVISION OFFICIAL RECALL

AN ACT to amend and reenact sections 16.1-01-10 and 44-08-21 of the North Dakota Century Code, relating to petitions for the recall of political subdivision elected officials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-10. Secretary of state to pass upon sufficiency of petitions - Method - Time limit. The secretary of state shall have a reasonable period, not to exceed thirty-five days, in which to pass upon the sufficiency of any petition mentioned in section 16.1-01-09. The secretary of state shall conduct a representative random sampling of the signatures contained in ~~such~~ the petitions by the use of questionnaires, post cards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the secretary of state to be invalid ~~shall~~ may not be counted, and all violations of law discovered by the secretary of state ~~shall~~ must be reported to the attorney general for prosecution. When the petition is for the recall of an elected official of a political subdivision under section 44-08-21, the petition must be deemed insufficient unless the petition contains a stated reason or reasons for the recall consistent with the reasons provided in section 44-08-21.

\* SECTION 2. AMENDMENT. Section 44-08-21 of the 1989 Supplement to 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 for misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency by petition of electors equal in number to twenty-five percent of the voters voting in the political subdivision at the last who voted in the most recent general election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition must include the stated reason for the recall and must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in

\* NOTE: Section 44-08-21 was also amended by section 1 of Senate Bill No. 2569, chapter 480.

which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within ~~thirty~~ forty days if the official finds the petition valid and sufficient. No special election may be called if the 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 of the petition. Other candidates for the office may be nominated in a manner provided by law. 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.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 209

SENATE BILL NO. 2424  
(Stenehjem)

### VOTER LISTS

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to voter lists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Voter lists - Addition or transfer of names. In a county in which the county auditor prepares a list of the persons who voted at a prior election and provides the list to voting precincts on election day, the county auditor, with the approval of the secretary of state, may establish a procedure by which a person may transfer that person's name from the voter list of one precinct to the voter list of another precinct in the county if that person establishes a new residence, and by which a person who establishes residence in the county may have that person's name placed on the voter list in the appropriate precinct. The procedure provided for in this section may not be used to require the registration of electors.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 210

SENATE BILL NO. 2403  
(Senators Graba, Stenehjem)  
(Representative Scherber)

### PUBLIC BUILDING ACCESSIBILITY

AN ACT to amend and reenact sections 16.1-04-02, 16.1-13-27, and 48-02-19 of the North Dakota Century Code, relating to physically disabled accessibility requirements for public buildings and facilities and voting places.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-04-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-04-02. Voting places - Duties and responsibilities of the board of county commissioners or the governing body of the city. The board of county commissioners of each county:

1. Shall designate a voting place for each precinct and may alter ~~such~~ the voting places when there is a good and sufficient reason. However, the voting places for precincts located within the boundaries of any incorporated city ~~shall~~ must be designated, and altered if required, by the governing body of the city.
2. Shall provide that all voting places ~~which~~ are ~~reasonably~~ accessible to the elderly and the ~~handicapped~~ physically disabled.

SECTION 2. AMENDMENT. Section 16.1-13-27 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-13-27. Disability of elector - Polling place accessibility. Any elector who declares to the judges of the election that the elector cannot read the English language, or that because of blindness or other disability is unable to mark the elector's ballot, upon request, may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter ~~shall~~ may give information regarding the ~~same~~ ballot. No elector, other than one who is unable to read the English language or one who because of disability is unable to mark a ballot, ~~shall~~ may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. ~~In order to comply with the reasonable accessibility requirement of subsection 2 of section 16.1-04-02,~~

in any polling place not accessible to an elector suffering from a physical disability or handicap, the elector may have two members of the election board who are of opposite political parties deliver a ballot from the polling place to a convenient place within the building. After the ballot has been delivered, the disabled or handicapped elector shall cast the ballot in the general presence of both officials. After returning to the polling place with the voted ballot, the election officials shall immediately give the name and address of the elector to the poll clerks who shall enter the information in the pollbooks. The voted ballot must then immediately be placed in the ballot box by both election officials. In order to comply with the reasonable accessibility requirement of subsection 2 of section 16-1-04-02, if a polling place cannot be made accessible, an alternate accessible site within reasonable proximity may also be provided for voting. The board of county commissioners shall publicize the location of alternate polling places if provided. Parking facilities at polling places must be accessible to the elderly and the handicapped physically disabled and must be clearly marked.

SECTION 3. AMENDMENT. Section 48-02-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-19. Public buildings and facilities to be usable by physically handicapped disabled - Access requirements. All public buildings and facilities constructed, in whole or in part, from funds of the state or of its political subdivisions and buildings leased by state agencies, departments, or institutions must be accessible to, and usable by, the physically handicapped disabled in accordance with the provisions of this section by July 1, 1981, with the following exceptions: (1) institutions under the supervision and control of the board of higher education must be constructed or remodeled so as to make all programs offered therein accessible as required in this section by July 1, 1996; and (2) areas, offices, or levels of public buildings not used for activities open to members of the general public. In meeting the requirements of this section, full consideration must be given to the rules recommended in and provided by the American standard specifications (A117-1-1961) approved October 31, 1961, by the American standards association, and future amendments thereto uniform federal accessibility standards. Governing bodies of political subdivisions shall require a statement from the person or persons preparing the plans and specifications for the building or facility that the plans and specifications are in conformance with the provisions of this section. Adequate space for the physically handicapped disabled to park automobiles near the facility without the necessity of crossing a street to reach the facility must be provided. All parking spaces reserved for use by motor vehicles operated by or for physically handicapped disabled persons must be designated by blue paint on the curb or edge of the paved portion of the parking space, as provided in section 39-01-15. All city curbs and crosswalks at principal intersections in the vicinity of public buildings must be made usable to persons in wheelchairs.

Approved April 5, 1991  
Filed April 8, 1991



## CHAPTER 211

HOUSE BILL NO. 1415  
(Representatives Mutzenberger, Snyder)  
(Senator Redlin)

## ELECTION OFFICER APPOINTMENTS

AN ACT to amend and reenact subsection 2 of section 16.1-05-01 of the North Dakota Century Code, relating to appointment of election officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-05-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The election judges for each precinct ~~shall be~~ are the precinct committeemen receiving the largest number of votes at the precinct caucus at which they were elected, and representing the two parties ~~which that~~ cast the largest and next largest number of votes in the state at the last general election. If for any reason a precinct committeeman does not wish to serve as an election judge, ~~he the committeeman~~ shall appoint from ~~his the committeeman's~~ precinct a member of ~~his the committeeman's~~ party to serve as election judge. ~~Should such~~ If the appointment ~~not be~~ is not made, the position ~~shall~~ must be filled by appointment by the district party chairman. Each election judge ~~shall~~ must be given a certificate of appointment signed by the chairman of the district committee of ~~his the judge's~~ party. The district committee chairman shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least ~~two weeks prior to twenty-one days~~ before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judge. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that either of the election judges or any poll clerk is disqualified under ~~the provisions~~ of this chapter, the inspector shall remove ~~such that~~ judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place ~~such the~~ oath or affidavit before the state's attorney of the county.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 212

SENATE BILL NO. 2506  
(Mathern)**ABSENTEE BALLOTS**

AN ACT to amend and reenact sections 15-47-06, 16.1-07-05, subsection 1 of section 16.1-07-08, and subsection 1 of section 16.1-07-08.1, and section 40-21-13 of the North Dakota Century Code, relating to absentee ballots; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 15-47-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, must be conducted and the votes must be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall ~~proceed to~~ count and canvass the votes for each office and the person receiving the highest number of votes for an office must be declared elected. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by ~~said~~ the candidates, the election must be decided in the presence of the judges and clerks of election in a manner agreed upon by ~~said~~ the candidates. A record of the proceedings must be made in the records of the business manager of the district. Returns must be made to the school board showing the number of votes cast for each person for any office, ~~and such~~. The returns must be signed by the judges and clerks of election and filed with the business manager of the district within two days thereafter. The school board shall canvass all election returns and shall declare the result of any election within three days thereafter, and the result of the election must be entered upon the records of the board. The person receiving the highest number of votes for each office in the district must be declared elected. Absent voters' ballots ~~may~~ must be ~~used~~ available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

SECTION 2. AMENDMENT. Section 16.1-07-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 15-47-06 was also amended by section 1 of House Bill No. 1120, chapter 197, and by section 2 of Senate Bill No. 2299, chapter 176.

16.1-07-05. Time for making application applying for ballot. At any time within sixty days next preceding in an election year, any qualified elector expecting to be absent on election day as provided in section 16.1-07-01 may make application apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, for an official ballot to be voted at such that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States, may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to those electors eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election.

SECTION 3. AMENDMENT. Subsection 1 of section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, auditor of the city, or clerk business manager of the school district, as the case may be, shall send to such the absent voter by mail, postage prepaid at the expense of the political subdivision conducting the election, one official ballot, or personally deliver said the ballot to the applicant or his the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter; provided, that the. The agent signs his shall sign the agent's name before receiving the ballot and deposits deposit with the auditor or clerk business manager of the school district, as the case may be, authorization in writing from the applicant to receive such the ballot or according to requirements hereinafter set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

SECTION 4. AMENDMENT. Subsection 1 of section 16.1-07-08.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding any other provision of this chapter, a qualified absentee elector may apply to the county auditor not earlier than ninety days before an election for a special write-in absentee ballot. This ballot may be used to vote for presidential electors

and members of the United States senate and of the United States house of representatives.

SECTION 5. AMENDMENT. Section 40-21-13 of the North Dakota Century Code is amended and reenacted as follows:

40-21-13. Municipal elections to be governed by rules applicable to county elections - Absent voting. The manner of conducting, voting at, keeping poll lists, and canvassing votes at municipal elections, and contests of the results of ~~such the~~ elections ~~shall be~~ is governed, as nearly as possible and except as otherwise provided in this chapter, by the laws of this state applicable to elections and contests in the case of county officers. Absent voters' ballots ~~may~~ must be used available in municipal elections in accordance with chapter 16.1-07.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 213

HOUSE BILL NO. 1581  
(Representative Bodine)  
(Senators Keller, Holmberg)

### CAMPAIGN CONTRIBUTIONS

AN ACT to amend and reenact section 16.1-08-02 of the North Dakota Century Code, relating to campaign contributions by corporations, cooperative corporations, and associations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-08-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08-02. Campaign contributions by corporations, cooperative corporations, and associations prohibited - Violation - Penalty.

1. ~~No~~ A corporation, cooperative corporation, or association ~~shall~~ may not make a direct contribution:
  - a. To aid any political party, political committee, or organization.
  - b. To aid any corporation or association organized or maintained for political purposes.
  - c. To aid any candidate for political office or for nomination to ~~such~~ political office.
  - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
  - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. ~~Nothing in this~~ This section shall be construed to does not prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, or association. It ~~shall be~~ is unlawful for:
  - a. The person or persons controlling such a fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilizing money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilizing money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a

- commercial transaction may, however, be used to pay costs of administration of the fund.
- b. Any person soliciting an employee, stockholder, patron, or member for a contribution to such a fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation, or of the general political philosophy intended to be advanced through committee activities.
  - c. Any person soliciting an employee or member for a contribution to such a fund to fail to inform the employee or member, at the time of the solicitation, of ~~his~~ the right to refuse to contribute without any reprisal.
  - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed, and of amounts expended for political purposes.
  - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, or association maintaining the political committee.
3. A political committee formed to aid or oppose a political party, committee, organization, association, a candidate for political office or nomination to political office, or a measure to be voted upon by the voters of the state shall register its name, address, and its agent's name and address with the secretary of state. The registration must be before the distribution of any contribution and must be submitted with a registration fee of five dollars.
4. All political committees formed for the purpose of administering the segregated fund provided for ~~herein~~ in this section shall file a statement listing all contributions received in excess of ~~one~~ two hundred dollars in the aggregate from each contributor for the twelve-month period beginning with the first day of October and ending with the thirtieth day of September of the following year, showing the name and mailing address of each contributor of an amount in excess of ~~one~~ two hundred dollars in the aggregate for each such twelve-month period, and a listing of all disbursements of an amount in excess of one hundred dollars in the aggregate made for political purposes, no later than October fifteenth following each such twelve-month period with the ~~office of~~ secretary of state. Within thirty days of the close of the calendar year all political committees shall file a supplemental statement in the same form for the last three months of the calendar year.
- a. The form of all statements required by this chapter ~~shall~~ must be as prescribed by the secretary of state.
  - b. The secretary of state may arrange an audit of any statement filed ~~pursuant to~~ under this chapter. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit ~~shall~~ must be reported to the attorney general.

- c. Records and statements ~~shall~~ must be preserved by the secretary of state for a period of four years from the date of filing. The records and statements are public records and ~~shall~~ must be open to public inspection.
- 4- 5. No A person ~~shall~~ may not make a payment of his own that person's money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies such the money, and ~~no~~ a person may not knowingly ~~shall~~ receive such payment nor enter nor cause the same payment to be entered in ~~his~~ that person's account or record in any name other than that of the person by whom it actually was furnished.
- 5- 6. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, or association funds or otherwise violates ~~the provisions of~~ this section, it ~~shall be~~ is prima facie evidence of a violation by the corporation, cooperative corporation, or association.
- 6- 7. A violation of ~~the provisions of~~ this section may be prosecuted in the county where the contribution is made, or in any county in which it has been paid or distributed.
- 7- 8. It ~~shall be~~ is a class A misdemeanor for an officer, director, stockholder, attorney, agent, or representative of any corporation, cooperative corporation, or association to violate ~~any of the provisions of~~ this section, or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of ~~the provisions of~~ this section ~~shall be~~ is guilty of a class A misdemeanor.
- 8- 9. Any officer, director, stockholder, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section ~~shall be~~ is liable to the company, corporation, or association for the amount so contributed.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 214

SENATE BILL NO. 2298  
(Stenehjem)

### CANDIDATE INTEREST STATEMENT FILING

AN ACT to amend and reenact section 16.1-09-02 of the North Dakota Century Code, relating to filing of statement of interests of candidates for elective office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-09-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall file a statement of interests as required by this chapter. ~~A candidate for a statewide elective office shall file the statement of interests with the secretary of state. A candidate for election as a member of the legislative assembly and for offices other than statewide shall file the statement of interests with the county auditor, or the city auditor if the candidate is running for city office, of the candidate's county or city of residence. A candidate for elective office shall file the statement of interests with the officer with whom the candidate filed the candidate's certificate of nomination, certificate of endorsement, or petition of nomination.~~ Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, or a petition of nomination, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate; provided, that any person who has filed a statement as the result of candidacy in a primary election need not refile prior to running in the following general election. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

Approved March 25, 1991  
Filed March 26, 1991



## CHAPTER 215

SENATE BILL NO. 2508  
(Senators O'Connell, Goetz, Streibel)  
(Representatives Carlson, Trautman, Hokana)

### NOMINATION PETITION SIGNATURES

AN ACT to amend and reenact subdivision c of subsection 2 of section 16.1-11-11 and section 40-21-07 of the North Dakota Century Code, relating to signature requirements for nomination petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 2 of section 16.1-11-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. The signatures of qualified electors, the number of which must be determined as follows:
  - (1) If the office is under no party designation, the signatures of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.
  - (2) If the office is under no party designation and multiple candidates were elected to the office at the preceding general election at which the office was voted upon, the signatures of not less than two percent and not more than five percent of the votes cast for all candidates divided by the number of candidates that were to be elected to that office.
  - (3) If the office is under a party designation, the signatures of the same percentage as provided in paragraph 1 of the total vote cast for the candidate of the party represented for the same position at the most recent general election at which the office was voted upon.
  - ↔ (4) If there were more than one party candidate, the signatures of the same percentage as provided in paragraph 1 of the total number of votes for all party candidates divided by the number of party candidates.
  - ↔ (5) If no candidate was elected or no votes were cast for an office at any general election, the number of signers equal to the percentage as provided in paragraph 1 applied to the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's

county or district. This average ~~shall~~ must be determined by dividing by two the total vote cast for those offices.

~~(5)~~ (6) In no case ~~shall~~ may more than three hundred signatures be required.

SECTION 2. AMENDMENT. Section 40-21-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-07. Petition for nomination of elective official in ~~municipalities~~ cities - Signatures required - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least thirty-three days and before four p.m. on the thirty-third day ~~prior to~~ before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition ~~shall~~ must reside within the ward or precinct in and for which ~~such that~~ officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it ~~shall~~ must be in the possession of the city auditor before four p.m. on the thirty-third day prior to the holding of the election. In no case shall However, no more than three hundred signatures may be required, and ~~such the~~ signatures may be on separate sheets of paper. Each qualified elector who signs ~~such~~ a petition shall add to ~~his name~~ his the petition the petitioner's mailing address.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 216

HOUSE BILL NO. 1183  
(Committee on Judiciary)  
(At the request of the Public Service Commission)

### STATE OFFICE BALLOT LISTING

AN ACT to amend and reenact subsection 3 of section 16.1-11-26 of the North Dakota Century Code, relating to the order in which names of state offices appear on the ballot.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 16.1-11-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. State offices:

governor and lieutenant governor  
secretary of state  
state auditor  
state treasurer  
attorney general  
commissioner of insurance  
commissioner of agriculture  
~~commissioner of public service~~ commissioner  
tax commissioner

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 217

SENATE BILL NO. 2391  
(Stenehjem, Holmberg)

### **PRESIDENTIAL WRITE-IN CANDIDATE CERTIFICATE**

AN ACT relating to certificates of candidacy by write-in candidates for presidential electors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Certificate of candidacy by write-in candidates for presidential electors. A person who intends to be a write-in candidate for president of the United States shall file a certificate of write-in candidacy with the secretary of state by four p.m. on the twenty-first day before the general election. The certificate must contain the names and addresses of the candidates for presidential electors for that presidential candidate and a certification of acceptance signed by each candidate for elector. The candidate shall sign the certificate. The certificate may also include the name and address of a candidate for vice president of the United States and a certification of acceptance signed by that candidate. The secretary of state shall prescribe the form of the certificate of write-in candidacy and the certification of acceptance. Before the thirteenth day before the election, the secretary of state shall certify the names of the presidential candidates and the presidential electors to each county auditor as write-in candidates.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 218

HOUSE BILL NO. 1304  
(Kretschmar)

### CANDIDATES FOR MULTIPLE OFFICES

AN ACT to amend and reenact section 16.1-12-03 of the North Dakota Century Code, relating to the nomination and election of a person to more than one office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception. No certificate of nomination provided for by this chapter, except in the case of presidential electors, may contain the name of more than one nominee for each office to be filled. ~~Except for persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than a county and except for persons holding or seeking nomination to the office of county judge; any~~ A person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly, ~~unless the no-party office is the office of county judge or district court judge, or a statewide elective office.~~ Except as may be permitted in this section, no person may participate directly or indirectly in the nomination of more than one person for each office to be filled on the general election ballot, except a person may sign a certificate of nomination by petition for more than one person for each office, and no person may accept a nomination to more than one office on the general election ballot. No political party is entitled to more than one set of nominees on the official general election ballot.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 219

HOUSE BILL NO. 1588  
(Linderman, Thorpe)

**VOTER ABSTRACTS AND ELECTION RECOUNTS**

AN ACT to amend and reenact section 16.1-15-25 and subsections 1 and 2 of section 16.1-16-01 of the North Dakota Century Code, relating to voter abstracts and election recounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-15-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors. Within ten days and before four p.m. on the tenth day following any general election, the county auditor of each county, under ~~his~~ official seal, shall return to the secretary of state a certified abstract of the votes cast in ~~his~~ the county at ~~such~~ the election for each candidate for state and congressional offices, judges of the district courts, candidates for the legislative assembly, and for amendments to the constitution and other measures. In presidential years, the county auditor shall make a separate certified abstract of the votes cast for electors for president and vice president of the United States. The separate abstract for presidential electors ~~shall~~ must be sealed, endorsed "presidential election returns", and ~~shall~~ must be transmitted by registered or certified mail to the secretary of state. At the time the county auditor transmits the certified abstract of the votes cast in ~~his~~ the county, ~~he~~ the county auditor shall file with the secretary of state a certificate showing the names and addresses of the persons who were elected to the various county offices in ~~his~~ the county.

SECTION 2. AMENDMENT. Subsections 1 and 2 of section 16.1-16-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A recount must be conducted when:
  - a. Any person failed to be nominated in a primary election by one percent or less of the highest vote cast for a candidate ~~of his~~ party for the office sought.
  - b. Any person failed to be elected in a general or special election by one-half of one percent or less of the highest vote cast for a candidate for that office.
  - c. A question or measure submitted to the qualified electors has been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election.

2. A demand for a recount may be made by any of the following:
  - a. Any person who failed to be nominated in a primary election by more than one percent and less than two percent of the highest vote cast for a candidate ~~of the person's party~~ for the office sought.
  - b. Any person who failed to be elected in a general or special election by more than one-half of one percent and less than two percent of the highest vote cast for a candidate for that office.

Approved March 25, 1991

Filed March 26, 1991

# FIRES

## CHAPTER 220

HOUSE BILL NO. 1182  
(Committee on Political Subdivisions)  
(At the request of the Attorney General)

### FIRE REPORT FEES

AN ACT to amend and reenact section 18-01-08 of the North Dakota Century Code, relating to the fee paid for fire reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-01-08 of the North Dakota Century Code is amended and reenacted as follows:

18-01-08. Compensation of fire chiefs and executive officers of municipalities for reporting to fire marshal. There shall be paid to the chief of the fire department and to the auditor of each city, who does not receive fifty dollars or more annually as compensation for his services as such and who is required by this chapter to report fires to the state fire marshal, a fee of one dollar and fifty cents for each fire reported to the satisfaction of the fire marshal. The fire report fee required by this section must be paid only if the fire marshal receives ten or more fire reports annually from a city's fire chief and auditor. Such fees shall be paid at the close of each fiscal year out of funds appropriated for that purpose by the legislative assembly.

Approved April 3, 1991  
Filed April 4, 1991



## CHAPTER 221

HOUSE BILL NO. 1530  
(Representative Laughlin)  
(Senator Wogsland)

### **FIREBREAKS FOR CRP LAND**

AN ACT to create and enact a new section to chapter 18-10 of the North Dakota Century Code, relating to firebreaks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 18-10 of the North Dakota Century Code is created and enacted as follows:

Development of firebreaks. The board of directors of a rural fire protection district, with other state and federal agencies, may evaluate the need for firebreaks and ensure that unprotected acreage enrolled in the conservation reserve program is dissected into approximately one hundred sixty acre [64.75 hectare] containment areas for fire control. In developing plans for firebreaks, the board shall make the best possible use of existing natural and artificial barriers, such as lakes, streams, wetlands with water, ponds, clean tilled cropland, gravel pits, and roads. For purposes of this section, a firebreak means a strip of fire retarding vegetation, no less than thirty feet [9.14 meters] nor more than fifty feet [45.72 meters] wide.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 222

SENATE BILL NO. 2348  
(Satrom)

## FIREFIGHTERS RELIEF ASSOCIATION

AN ACT to amend and reenact sections 18-11-01, 18-11-02, 18-11-03, 18-11-04, 18-11-05, 18-11-07, 18-11-09, 18-11-10, 18-11-11, 18-11-12, 18-11-13, 18-11-14, 18-11-15, 18-11-15.1, 18-11-16, 18-11-17, 18-11-18, 18-11-20, 18-11-21, 18-11-22, and 18-11-23 of the North Dakota Century Code, relating to the alternate firefighters relief association plan; and to repeal section 18-11-08 of the North Dakota Century Code, relating to the report of receipts and expenditures of state funds by a firefighters relief association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-11-01 of the North Dakota Century Code is amended and reenacted as follows:

18-11-01. Alternate ~~firemen's~~ firefighters relief association plan. ~~The provisions of this chapter shall be an~~ An alternate ~~firemen's~~ firefighters retirement and disability plan which may be implemented by a firefighters relief association in lieu of the plan provided for in chapter 18-05. ~~Within sixty days after July 1, 1959~~ Before a relief association may implement the plan provided for in this chapter, a vote ~~shall~~ must be taken among the members of ~~each firemen's~~ that relief association ~~now in existence within the state~~ to determine whether the association ~~shall~~ will adopt the plan authorized by this chapter or retain the plan established in chapter 18-05; ~~however, if~~. If the members of the association vote to adopt the plan authorized by this chapter ~~such~~, that plan ~~shall~~ does not become operative until the city government of the community in which the fire department is located has approved the plan.

SECTION 2. AMENDMENT. Section 18-11-02 of the North Dakota Century Code is amended and reenacted as follows:

18-11-02. Operation of association. The firefighters relief association ~~shall~~ must be organized, operated, and maintained in accordance with its articles of incorporation and its bylaws by ~~firemen~~ firefighters who are members of the fire department. ~~It~~ The relief association may regulate and manage its own affairs and for that purpose has such corporate powers as are necessary and useful, subject to the regulations and restrictions of the laws of this state pertaining to corporations.

SECTION 3. AMENDMENT. Section 18-11-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-03. "Fireman Firefighter" defined. For purposes of As used in this chapter, the term "fireman firefighter" means any person who is regularly entered on the payroll of the department serving on active duty and

engaged in the hazards of firefighting. The term includes a probationary firefighter but does not include a probationary or a substitute fireman firefighter or any person employed irregularly by the fire department. For cities having a population in excess of sixty thousand, the term "fireman" includes probationary firemen.

SECTION 4. AMENDMENT. Section 18-11-04 of the North Dakota Century Code is amended and reenacted as follows:

18-11-04. Accrued rights not destroyed by this plan - Transfer of funds - Records. Any fireman firefighter who is a member of the relief association which has been established under chapter 18-05 at July 1, 1959, may continue as a member of the relief association created by this chapter if the department of which he the firefighter is a member has elected to come under the provisions of this chapter, and any member of the relief association established under chapter 18-05 receiving pensions or benefits or widow or children receiving pensions or benefits shall continue to receive such pensions or benefits as are prescribed and being paid under existing association bylaws on July 1, 1959, and any fireman firefighter who is a member of an association maintained under chapter 18-05, and who shall become becomes eligible for full pension under such that association's bylaws shall may not be penalized by any conditions of this chapter. Whenever a department votes to come under the provisions of this chapter, any and all funds or accounts and all other records and property maintained by any relief association being discontinued shall must be transferred to the relief association being established under this chapter.

SECTION 5. AMENDMENT. Section 18-11-05 of the North Dakota Century Code is amended and reenacted as follows:

18-11-05. Application for membership. When any fireman hereafter employed firefighter desires to become a member of the relief association provided by this chapter, he shall make written application therefor within ninety days after the date he is entered on the payroll of the department that firefighter may apply in writing for membership to the association. The application shall must be made on a form supplied by the association, and shall must be accompanied by the certificate of a physician as required by the association's bylaws. The application and certificate shall must be filed with the secretary of the association, with required fees, and thereafter the board of examiners of the association shall make an investigation and file its report thereof concerning the application with the secretary. The association shall act upon an application within ninety days from the date it is filed with the secretary.

SECTION 6. AMENDMENT. Section 18-11-07 of the North Dakota Century Code is amended and reenacted as follows:

18-11-07. Officers. The officers of the relief association shall be include a president and a vice president, both of whom shall must be elected from among members of the board of trustees, a secretary-treasurer, a board of trustees, and a finance committee. All such These officers shall must be elected in the manner and for the terms prescribed in its the association's articles of incorporation and bylaws. The board of trustees shall manage the affairs of the association. The secretary-treasurer shall furnish a corporate bond to the association for the faithful performance of his the secretary-treasurer's duties in an amount to be determined by the association. The premium on the bond shall must be paid by the association.

The president and secretary-treasurer may be paid an annual salary not to exceed one-half of one percent of the current monthly salary of a first-class fireman for each member account a fee in an amount as determined by the association.

SECTION 7. AMENDMENT. Section 18-11-09 of the North Dakota Century Code is amended and reenacted as follows:

18-11-09. Apportioning insurance tax received by city. The amount received under section 18-04-05 by the city auditor in a city having that has a paid fire department and a duly organized and incorporated firemen's firefighters relief association shall, except as hereafter provided, must be apportioned as follows: one-half thereof shall must be placed in a fund to be disbursed by the governing body of the city in maintaining the fire department, and one-half thereof shall must be paid to the secretary-treasurer of the firemen's firefighters relief association. In addition, thereto However, the governing body of the city may in its discretion pay all or any portion of the amount normally disbursed in maintaining the fire department to the secretary-treasurer of the firemen's firefighters relief association if its financial condition shall make such makes that disposition necessary or advisable.

SECTION 8. AMENDMENT. Section 18-11-10 of the North Dakota Century Code is amended and reenacted as follows:

18-11-10. City shall make additional Additional city levy. At the time the tax levies for the support of the city are made, and in addition thereto, the governing body of any city which shall have that has adopted this a plan, under this chapter shall also levy a tax on all taxable property within the city sufficient in amount to equal a minimum of eight percent of the current annual salary of a first-class fireman firefighter as last determined and approved by the governing body of the city, for each active member of the fire department relief association at the time the levy is made. This tax shall must be levied notwithstanding the city maximum annual tax levy for all purposes as limited by statute. This tax is in addition to the tax levy as so limited.

SECTION 9. AMENDMENT. Section 18-11-11 of the North Dakota Century Code is amended and reenacted as follows:

18-11-11. Proceeds from levy to be forwarded to association Levy proceeds. Each year in which the levy provided for in section 18-11-10 is made, immediately after April first and September first the proceeds of the levy, together with any interest and penalties collected thereon, shall must be forwarded by the county treasurer to the city auditor, and after certification by the city auditor, the city auditor shall pay over such those amounts to the secretary-treasurer of the firemen's firefighters relief association.

SECTION 10. AMENDMENT. Section 18-11-12 of the North Dakota Century Code is amended and reenacted as follows:

18-11-12. Firemen to contribute to association fund Contribution by firefighters. The officer in charge of the finances of the city shall deduct from the salary of each fireman firefighter participating in the plan provided in this chapter an amount to be determined by the bylaws of the firemen's firefighters relief association but which shall be may not be less

than five percent of the monthly salary of a first-class fireman firefighter, until such firemen those firefighters have completed thirty years' service with the department at which time the amount deducted shall may be decreased to a lesser amount to be prescribed by the bylaws of the relief association, but which shall be may not be less than two and one-half percent of the monthly salary of a first-class fireman firefighter. This amount shall must be paid to the secretary-treasurer of the relief association monthly and shall must be credited by the association to each fireman firefighter individually in the state fund. All moneys paid into city pension funds prior to July 1, 1959, by firemen firefighters participating in the plan provided for in this chapter shall must be paid to the secretary-treasurer of the association and shall be credited by the association to the individual member in the state fund.

SECTION 11. AMENDMENT. Section 18-11-13 of the North Dakota Century Code is amended and reenacted as follows:

18-11-13. Association state fund and association general fund - Expenditures - Investment. The moneys received by the association are to must be kept in an "a fund known as the association state fund" or in an "association general fund". The moneys received from the state, city, or employee's salary contribution shall must be deposited in the "association state fund" and may be expended only for the purposes named set forth in section 18-11-14. All other moneys shall be deposited in the "association general fund" and may be expended for other purposes related to the general principles for which this chapter is established. The relief association shall manage and control all funds moneys that come into its possession. Moneys in these funds the fund may be invested in bonds of the United States of America, bonds of the state of North Dakota or any other state, in certificates of indebtedness of the state of North Dakota, in any bonds or certificates of indebtedness of any political subdivision of the state of North Dakota which constitute the general obligations of the issuing tax authority, or the Bank of North Dakota or any other bank or savings and loan association which is insured by the United States of America. The board may also invest all or part of the moneys in these funds the fund in other investments by selecting a funding agent or agents and establish an investment agreement contract regarding such funds. The contract shall must authorize the funding agent or agents to hold and invest such funds those moneys for the board and such funds. The moneys invested shall must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed.

SECTION 12. AMENDMENT. Section 18-11-14 of the North Dakota Century Code is amended and reenacted as follows:

18-11-14. Disbursement of moneys from association state fund. The amounts paid into the relief association by the state, city, and employee's salary contribution and set aside in the "association state fund" shall must be appropriated and disbursed only for:

1. The payment of disability or service pensions to members of the association;
2. Pensions to widows and children or orphans of members or retired members;

3. The payment of the salary fees of the president and secretary-treasurer and the premiums on his the bond of the secretary-treasurer or any other officer;
4. Funeral payments;
5. Cost of the state audit;
6. Essential postage, office supplies, and equipment;
7. Actuarial study; ~~and~~
8. Return of contributions to those qualified under section 18-11-20;
9. Investment contract fees;
10. Legal and accounting fees;
11. The indemnification of members of the board of trustees pursuant to section 18-11-18; and
12. Any other expenditures related to the general principles for which this chapter is established.

SECTION 13. AMENDMENT. Section 18-11-15 of the North Dakota Century Code is amended and reenacted as follows:

18-11-15. Service pensions - Qualifications.

1. A monthly service pension ~~shall~~ must be paid to members of the association with the following qualifications:

Years of service	Years of age at retirement	Percent of first-class <del>fireman's</del> firefighter's monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

2. All members must serve twenty years before they ~~shall be~~ are eligible for a service pension; ~~however.~~ However, any member who has twenty years of service and who has not attained retirement age ~~shall have the right to may~~ retire from the department without forfeiting ~~his the~~ right to a service pension. The association, in its bylaws, may establish a retirement age of not less than fifty years, at which time the service pension shall become payable. ~~Such~~ This retirement age may be established for all ~~firemen~~ firefighters or classes of ~~firemen~~ firefighters by birth dates. A person who has served twenty years or more and who is separated

from service ~~shall~~ must, upon application, be placed on the deferred pension roll of the association, and after ~~he has reached~~ reaching retirement age, the association shall, upon application therefor, pay ~~his the~~ service pension from the date ~~he the~~ member attains eligibility at a rate of forty percent of the monthly salary of a first-class ~~fireman~~ firefighter as determined on January first of the year in which the pension is paid. Any person making such application ~~thereby~~ waives all other rights, claims, or demands against the association for any cause, except those causes that may have arisen from, or that may be attributable to, ~~his the~~ person's service on the fire department.

3. With the consent of the governing body of the municipality city involved, and in substitution for the pension payment schedule ~~set out provided~~ in subsection 1, a ~~firemen's~~ firefighters relief association shall pay a monthly service pension to members of the association with the following qualifications, the following amounts:

Years of service	Years of age	Percent of first-class <del>fireman's</del> <u>firefighter's</u> monthly salary on January first during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

SECTION 14. AMENDMENT. Section 18-11-15.1 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-15.1. Purchase of legislative service credit. A member may, prior to retirement, purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while employed as a ~~fireman~~ firefighter under this chapter. The member shall pay for this service credit an amount equal to the required member assessments and the employer contributions for that period of time plus interest as established by the board of trustees of the association. Service credit for legislative sessions prior to July 1, 1985, must be purchased before January 1, 1986. Service credit for each later legislative session must be purchased within one year after the adjournment of that legislative session.

SECTION 15. AMENDMENT. Section 18-11-16 of the North Dakota Century Code is amended and reenacted as follows:

18-11-16. Disability pensions - Qualifications. Any member of the relief association who is unable because of physical or mental disability, to perform the duties of a ~~fireman~~ firefighter shall receive monthly a

disability pension equal to fifty percent of the monthly salary of a first-class ~~fireman~~ firefighter on January first of the year that the pension is being paid, unless ~~such~~ that member is eligible for a larger service pension in which case ~~he~~ the member shall draw an amount equal to ~~his~~ the member's service pension. No member shall receive a disability pension unless ~~he~~ the member is disabled for a period of at least seven consecutive days, at which time ~~he~~ shall the member must be paid from the time of disability. However, ~~no~~ a member shall may not receive a disability pension for the days ~~he~~ the member was reimbursed by the city for accumulated sick leave.

SECTION 16. AMENDMENT. Section 18-11-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-17. Pensions to surviving spouses and children of deceased members. When a service pensioner, disability pensioner, deferred pensioner, or an active member of a relief association dies leaving: a surviving spouse to whom the deceased was married while an active member of the association, a child or children who were living while the deceased was on the payroll of the fire department or who were born within nine months after ~~said~~ the decedent was withdrawn from the payroll of ~~said~~ that fire department, or both such surviving spouse and such children, then such surviving spouse and children ~~shall be~~ are entitled to a monthly pension as follows:

1. If the deceased leaves only a surviving spouse, a pension in the sum of forty percent of a first-class ~~fireman's~~ firefighter's monthly salary on January first during year the pension is paid to the surviving spouse, during such spouse's natural life or until such spouse remarries.
2. If the deceased leaves both a surviving spouse and children, a monthly pension to the surviving spouse in the sum of forty percent of a first-class ~~fireman's~~ firefighter's monthly salary on January first during year the pension is paid, for the rest of the surviving spouse's natural life or until such spouse remarries, and to the parent or guardian of any children under the age of eighteen years of age there ~~shall~~ must be paid monthly twenty percent of a first-class ~~fireman's~~ firefighter's monthly salary to be divided equally among such children.
3. If the deceased leaves only children, a monthly pension ~~shall~~ must be paid to the guardian of such child or children for such child or children in the sum of sixty percent of a first-class ~~fireman's~~ firefighter's monthly salary on January first during the year the pension is paid, to be divided equally among such children; provided, however, that if there is only one surviving child, ~~he~~ that child shall receive a sum equal to forty percent of a first-class ~~fireman's~~ firefighter's monthly salary. All pensions to child or children shall terminate when the child or children reaches the age of eighteen years.
4. As used in this section, the term "child" means:
  - a. The natural or adopted child of a firefighter; or
  - b. The natural or adopted child of a firefighter's surviving spouse or former spouse who is designated in writing by the



firefighter as a child beneficiary under this section on a form supplied by the relief association.

SECTION 17. AMENDMENT. Section 18-11-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-18. Reduction in benefits if funds not sufficient. If at any time the relief association's actuary certifies that the balance of the association's fund, together with future contributions by active members and contributions by the state, or the city, or both, and earnings thereon, will be inadequate to provide future prescribed benefits for active and inactive members and their beneficiaries, the board of trustees of the association, by majority vote, may decrease the benefits provided for in sections 18-11-15, 18-11-16, and 18-11-17 in accordance with actuarial recommendations to assure the solvency of the fund and subject to the following conditions:

1. The benefit for existing and future retirees and pension recipients may not be less than the benefit paid in the previous calendar year to an existing retiree of similar status.
2. The reduction must be based upon actuarial recommendations which take into consideration pension benefit standards for similarly funded plans.
3. When the balance of the association's state fund, together with future contributions by active members, and contributions by the state, or the city, or both, and earnings thereon, are sufficient to provide future prescribed benefits for active and inactive members and their beneficiaries, benefits shall again be paid as prescribed by sections 18-11-15, 18-11-16, and 18-11-17. Such if such action may be taken only is recommended after actuarial study and recommendations which are and the action is approved by a majority vote of the board of trustees of the association.

Decisions of the board of trustees, made in good faith and based upon actuarial recommendations with respect to benefit adjustments under this section, are final and supersede any previous actions or bylaws of the association. The members of the board of trustees must be indemnified from the funds of the association for any claims or expenses of defending claims arising from decisions made in good faith and based upon actuarial recommendations under this section.

SECTION 18. AMENDMENT. Section 18-11-20 of the North Dakota Century Code is amended and reenacted as follows:

18-11-20. Members withdrawing from association - Members in military service. Each association shall adopt bylaws and regulations providing that in the event any member withdraws from employment in the department or ceases to be a member of the association, whether by death or otherwise, he shall be the member is entitled to a return of an amount which is not less than fifty percent nor more than one hundred percent of his the member's contributions paid to the association without interest. Any benefits already received by such person shall that member must be deducted from the amount which would be returned to him the member. Any applicant for a service pension who, subsequently to his entry into the service of such fire department, has served in the military forces of the United States, shall may not have the period of such that military service deducted in the computation of the

period of service herein provided for, but ~~such~~ that military service ~~shall~~ must be construed and counted as a part and portion of ~~his~~ the member's active duty in ~~said~~ that fire department, ~~provided, however.~~ However, that credit for ~~such~~ military service ~~shall~~ may not exceed five years. Any such member, who was a full-time regular ~~fireman~~ firefighter at the time of ~~his~~ the member's entry into the armed services and who seeks credit for ~~such~~ that military service, shall, upon ~~his~~ return to employment in the fire department, pay into the pension fund for each year of military service the same amount of money as ~~he~~ the member would have contributed from ~~his~~ the member's salary had ~~he~~ the member been in the continuous employment of the department.

SECTION 19. AMENDMENT. Section 18-11-21 of the North Dakota Century Code is amended and reenacted as follows:

18-11-21. Money received under pension not subject to legal process - Assignments. Payments made or to be made by a ~~firemen's~~ firefighters relief association to any member of the pension roll ~~shall is~~ not be subject to judgment, garnishment, execution, or other legal process. Persons entitled to such payments ~~shall do~~ not have the right to assign the same, and the association ~~shall have no authority to may not~~ recognize any assignment or to pay over any sum which has been assigned.

SECTION 20. AMENDMENT. Section 18-11-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-22. Examination of relief association records - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary-treasurer of each ~~firemen's~~ firefighters relief association receiving funds under the provisions of this chapter must be examined pursuant to section 54-10-14. If the audit report discloses that the money, or any part of it, has been or is being expended for unauthorized purposes, the state auditor shall report the facts to the governor. Thereupon, the governor shall direct the state auditor to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it ~~shall be made to appear~~ appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

SECTION 21. AMENDMENT. Section 18-11-23 of the North Dakota Century Code is amended and reenacted as follows:

18-11-23. Funeral benefits. The bylaws of the relief association shall provide for funeral benefits for its active or retired members not to exceed for each funeral twice the monthly salary of a first-class ~~fireman~~ firefighter on January first of the year in which the member dies.

SECTION 22. REPEAL. Section 18-11-08 of the North Dakota Century Code is repealed.

Approved April 3, 1991  
Filed April 4, 1991

# FOODS, DRUGS, OILS, AND COMPOUNDS

## CHAPTER 223

SENATE BILL NO. 2281  
(Senator Thane)  
(Representative Hausauer)

### CONTROLLED SUBSTANCE SCHEDULES

AN ACT to create and enact a new subsection to section 19-03.1-07 of the North Dakota Century Code, relating to controlled substances; and to amend and reenact section 19-03.1-01, subsections 3, 5, and 7 of section 19-03.1-05, subsections 3, 4, 7, and 8 of section 19-03.1-07, subsections 4, 6, 7, and 8 of section 19-03.1-09, subsections 3 and 4 of section 19-03.1-11, and subsection 5 of section 19-03.1-13 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-01. Definitions. As used in this chapter:

1. "Administer" means ~~the direct application of to apply~~ a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
  - a. A practitioner (or, in ~~his~~ the practitioner's presence, by ~~his~~ the practitioner's authorized agent); or
  - b. The patient or research subject at the direction and in the presence of the practitioner.
2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.
- ~~2-1-~~ 4. "Board" means the North Dakota controlled substances board.
- ~~3-~~ 5. "Bureau" means the ~~Bureau of Narcotics and Dangerous Drugs, Drug Enforcement Administration in the~~ United States Department of Justice or its successor agency.
- ~~4-~~ 6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.

- 5- 7. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- 6- 8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.
- 7- 9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- 8- 10. "Dispenser" means a practitioner who dispenses.
- 9- 11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- +0- 12. "Distributor" means a person who distributes.
- +1- 13. "Drug" means:
- Substances recognized as drugs in the official United States pharmacopeia, national formulary, or the official homeopathic pharmacopeia of the United States, or official national formulary, or any supplement to any of them;
  - Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man individuals or animals;
  - Substances (other than food) intended to affect the structure or any function of the body of man individuals or animals; and
  - Substances intended for use as a component of any article specified in subdivision a, b, or c. ~~It~~ The term does not include devices or their components, parts, or accessories.
- +1-1- 14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.
- +2- 15. "Immediate precursor" means a substance which:
- That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which in the manufacture of a controlled substance;
  - That is an immediate chemical intermediary used or likely to be used in the manufacture of a the controlled substance, the; and

c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

~~13-~~ 16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, ~~except that this.~~ The term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to ~~his~~ the practitioner's administering or dispensing of a controlled substance in the course of ~~his~~ the practitioner's professional practice; or

b. By a practitioner, or by ~~his~~ the practitioner's authorized agent under ~~his~~ the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

~~14-~~ 17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. ~~It~~ The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

~~15-~~ 18. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~16-~~ 19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable

of conversion into a drug having addiction-forming or addiction-sustaining liability. ~~It~~ The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). ~~It does include~~ The term includes its racemic and levorotatory forms.

- ~~17-~~ 20. "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.
- ~~18-~~ 21. "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- ~~19-~~ 22. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- ~~20-~~ 23. "Practitioner" means:
- a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.
  - b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.
- ~~21-~~ 24. "Production" includes the ~~manufacture~~ manufacturing, planting, ~~cultivation~~ cultivating, growing, or harvesting of a controlled substance.
- ~~22-~~ 25. "State" when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.
- ~~23-~~ 26. "Ultimate user" means ~~a person~~ an individual who lawfully possesses a controlled substance for ~~his~~ the individual's own use or for the use of a member of ~~his~~ the individual's household or for administering to an animal owned by ~~him~~ the individual or by a member of ~~his~~ the individual's household.

SECTION 2. AMENDMENT. Subsections 3, 5, and 7 of section 19-03.1-05 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

- a. ~~Acetyl-Alpha-Methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide).~~
- a. Acetyl-alpha-methylfentanyl (also known as N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
- b. Acetylmethadol.
- c. Allylprodine.
- d. Alphacetylmethadol.
- e. Alphameprodine.
- f. Alphamethadol.
- g. Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
- h. ~~Alpha-Methylthiofentanyl~~ Alpha-methylthiofentanyl (also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- i. Benzethidine.
- j. Betacetylmethadol.
- k. ~~Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide).~~
- k. Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- l. ~~Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide).~~
- l. Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
- m. Betameprodine.
- n. Betamethadol.
- o. Betaprodine.
- p. Clonitazene.
- q. Dextromoramide.
- r. Diampromide.
- s. Diethylthiambutene.
- t. DifenoXin.

- u. Dimenoxadol.
- v. Dimepheptanol.
- w. Dimethylthiambutene.
- x. Dioxaphetyl butyrate.
- y. Dipipanone.
- z. Ethylmethylthiambutene.
- aa. Etonitazene.
- bb. Etoxidine.
- cc. Furethidine.
- dd. Hydroxypethidine.
- ee. Ketobemidone.
- ff. Levomoramide.
- gg. Levophenacymorphan.
- hh. 3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- ii. ~~3-Methylthiofentanyl~~ 3-methylthiofentanyl (also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide).
- jj. Morpheridine.
- kk. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).
- ll. Noracymethadol.
- mm. Norlevorphanol.
- nn. Normethadone.
- oo. Norpipanone.
- pp. Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny] propanamide).
- qq. PEPAP ~~(1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine)~~  
(1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).
- rr. Phenadoxone.
- ss. Phenampromide.
- tt. Phenomorphan.
- uu. Phenoperidine.



- vv. Piritramide.
  - ww. Proheptazine.
  - xx. Properidine.
  - yy. Propiram.
  - zz. Racemoramide.
  - aaa. ~~Thiofentany] (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide).~~
  - aaa. Thiofentany] (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
  - bbb. Tilidine.
  - ccc. Trimeperidine.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):
- a. ~~4-bromo-2, 5-dimethoxy amphetamine. (Some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA.)~~
  - b. ~~2, 5-dimethoxy amphetamine. (Some trade or other names: 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA.)~~
  - c. ~~4-methoxyamphetamine. (Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA.)~~
  - d. ~~5-methoxy-3, 4-methylenedioxy amphetamine.~~
  - e. ~~4-methyl-2, 5-dimethoxyamphetamine. (Some trade and other names: 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; BDM and STP.)~~
  - f. ~~3, 4-methylenedioxy amphetamine.~~
  - g. ~~3, 4-methylenedioxymethamphetamine (MDMA).~~
  - a. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).
  - b. 2, 5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).
  - c. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).

- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy- $\alpha$ -methylphenethylamine; "DOM" and "STP").
- f. 3,4-methylenedioxy amphetamine.
- g. 3,4-methylenedioxymethamphetamine (also known as MDMA).
- h. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl- $\alpha$ -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.
- i. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy- $\alpha$ -methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.
- j. 3,4,5-trimethoxy amphetamine.
- i- k. Bufotenine- (Some trade and other names: 3-B Beta-Dimethyl-aminoethyl-5-hydroxyindole; (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine- $\rightarrow$  5-hydroxy-N,N-dimethyltryptamine; mappine).
- j- l. Diethyltryptamine- (Some trade or other names: N, N-Diethyltryptamine; DET- $\rightarrow$  (also known as N, N-Diethyltryptamine; DET).
- k- m. Dimethyltryptamine- (Some trade and other names: DMT- $\rightarrow$  (also known as DMT).
- i- n. Hashish.
- m- o. Ibogaine- (Some trade and other names: (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido  $\leftarrow$  2- $\rightarrow$  2- [1', 2':1,2] azepino  $\leftarrow$  4- $\rightarrow$  (5,4-b) indole; Tabernanthe *iboga*- $\rightarrow$  *iboga*).
- m- p. Lysergic acid diethylamide.
- o- q. Marijuana.
- p- r. Mescaline.
- q- s. Parahexyl- (Some trade or other names: (also known as 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzol[b, d]pyran; Synhexyl- $\rightarrow$  8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).
- r- t. Peyote, meaning (all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts).

s- u. N-ethyl-3-piperidyl benzilate.

t- v. N-methyl-3-piperidyl benzilate.

u- w. Psilocybin.

v- x. Psilocyn.

w- v. Tetrahydrocannabinols- **Synthetic (synthetic)** equivalents of the substances, contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) 6 Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) 3, 4 Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

x- z. Ethylamine analog of phencyclidine- ~~Some trade or other names-~~ (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)

y- aa. Pyrrolidine analog of phencyclidine- ~~Some trade or other names-~~ (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCy PCPy, PHP.)

z- bb. Thiophene Analog of Phencyclidine- ~~Some trade or other names-~~ analog of phencyclidine (also known as ~~1-(1-(2-thienyl) cyclohexyl) piperidine~~; 2-Thienyl Analog of Phencyclidine; ~~TPCP, TEP~~ → (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl analog of phencyclidine; TPCP, TCP).

cc. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

a. Fenethylamine.

b. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

c. N-ethylamphetamine.

d. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine.)

SECTION 3. AMENDMENT. Subsections 3, 4, 7, and 8 of section 19-03.1-07 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
  - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:
    - (1) Raw opium.
    - (2) Opium extracts.
    - (3) Opium fluid extracts.
    - (4) Powdered opium.
    - (5) Granulated opium.
    - (6) Tincture of opium.
    - (7) Codeine.
    - (8) Ethylmorphine.
    - (9) Etorphine hydrochloride.
    - (10) Hydrocodone.
    - (11) Hydromorphone.
    - (12) Metopon.
    - (13) Morphine.
    - (14) Oxycodone.
    - (15) Oxymorphone.
    - (16) Thebaine.
  - b. Any salt, compound, ~~isomer~~, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

- c. Opium poppy and poppy straw.
  - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, but not including except that the nondosage substances must include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
  - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).
4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:
- a. Alfentanil.
  - b. Alphaprodine.
  - c. Anileridine.
  - d. Bezitramide.
  - e. Bulk dextropropoxyphene (nondosage forms).
  - f. Carfentanil.
  - g. Dihydrocodeine.
  - h. Diphenoxylate.
  - i. Fentanyl.
  - j. Isomethadone.
  - k. Levomethorphan.
  - l. Levorphanol.
  - m. Metazocine.
  - n. Methadone.
  - o. Methadone - Intermediate Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
  - p. Moramide - Intermediate Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
  - q. Pethidine (also known as meperidine).

- r. ~~Pethidine - Intermediate A~~ Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- s. ~~Pethidine - Intermediate B~~ Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
- t. ~~Pethidine - Intermediate C~~ Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- u. Phenazocine.
- v. Priminodine.
- w. Racemethorphan.
- x. Racemorphan.
- y. Sufentanil.
7. ~~Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:~~
- a. ~~Immediate precursor to amphetamine and methamphetamine. Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.~~
- b. ~~Immediate precursors to phencyclidine (PCP):~~
- ~~(1) 1-phenylcyclohexylamine.~~
- ~~(2) 1-piperidinocyclohexanecarbonitrile (PCC).~~
8. ~~Hallucinogenic substances.~~
- a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a ~~federal~~ United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo ~~fb, d~~ [b,d] pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol) (THC).
- b. Nabilone [another name for nabilone (±)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo [b, d] pyran-9-one].

SECTION 4. A new subsection to section 19-03.1-07 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

- a. Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P, benzyl methyl ketone; methyl benzyl ketone.
- b. Immediate precursors to phencyclidine (PCP):
  - (1) 1-phenylcyclohexylamine.
  - (2) 1-piperidinocyclohexanecarbonitrile (PCC).

SECTION 5. AMENDMENT. Subsections 4, 6, 7, and 8 of section 19-03.1-09 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing that contains any quantity of the following substances having a depressant effect on the central nervous system:
  - a. Any compound, mixture, or preparation containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
  - b. Any suppository dosage form containing:
    - (1) Amobarbital;
    - (2) Secobarbital;
    - (3) Pentobarbital;or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.
  - c. Any substance containing that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.
  - d. Chlorhexadol.
  - e. Glutethimide.
  - f. Lysergic acid.
  - g. Lysergic acid amide.
  - h. Methyprylon.
  - i. Sulfondiethylmethane.

- j. Sulfonethylmethane.
- k. Sulfonmethane.
- l. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: ~~4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one; flupyrzapon~~ 4-2(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrzapon.
6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation **containing that contains** any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
  - Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - Not more than 300 milligrams of ~~dihydrocodeinone~~ hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
  - Not more than 300 milligrams of ~~dihydrocodeinone~~ hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.



7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:

- a. Boldenone;
- b. Chlorotestosterone;
- c. Clostebol;
- d. Dehydrochlormethyltestosterone;
- e. Dihydrotestosterone;
- f. Drostanolone;
- g. Ethylestrenol;
- h. Fluoxymesterone;
- i. Formebolone;
- j. Mesterolone;
- k. Methandienone;
- l. Methandranone;
- m. Methandriol;
- n. Methandrostenolone;
- o. Methenolone;
- p. Methyltestosterone;
- q. Mibolerone;
- r. Nandrolone;
- s. Norethandrolone;
- t. Oxandrolone;
- u. Oxymesterone;
- v. Oxymetholone;
- w. Stanolone;
- x. Stanozolol;
- y. Testolactone;
- z. Testosterone;
- aa. Trenbolone;

or any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers or distributes for human use.

8. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 6. AMENDMENT. Subsections 3 and 4 of section 19-03.1-11 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- Not more than 1 milligram of difenoxin ~~(DEA drug code No. 9168)~~ and not less than 25 micrograms of atropine sulfate per dosage unit.
  - Dextropropoxyphene (~~alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane~~ also known as ~~alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane~~).
4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- Alprazolam.
  - Barbital.
  - Bromazepam.
  - Camazepam.
  - Chloral betaine.

- f. Chloral hydrate.
- g. Chlordiazepoxide.
- h. Clobazam.
- i. Clonazepam.
- j. Clorazepate.
- k. Clotiazepam.
- l. Cloxazolam.
- m. Delorazepam.
- n. Diazepam.
- o. Estazolam.
- p. Ethchlorvynol.
- q. Ethinamate.
- r. Ethyl loflazepate.
- s. Fludiazepam.
- t. Flunitrazepam.
- u. Flurazepam.
- v. Halazepam.
- w. Haloxazolam.
- x. Ketazolam.
- y. Loprazolam.
- z. Lorazepam.
- aa. Lormetazepam.
- bb. Mebutamate.
- cc. Medazepam.
- dd. Meprobamate.
- ee. Methohexital.
- ff. Methylphenobarbital (also known as mephobarbital).
- gg. Midazolam.
- hh. Nimetazepam.

- ii. Nitrazepam.
- jj. Nordiazepam.
- kk. Oxazepam.
- ll. Oxazolam.
- mm. Paraldehyde.
- nn. Petrichloral.
- oo. Phenobarbital.
- pp. Pinazepam.
- qq. Prazepam.
- rr. Quazepam.
- ss. Temazepam.
- tt. Tetrazepam.
- uu. Triazolam.

SECTION 7. AMENDMENT. Subsection 5 of section 19-03.1-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 5. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:
  - a. ~~Propylhexedrine~~ Propylhexedrine.
  - b. Pyrovalerone.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 224

SENATE BILL NO. 2161  
(Committee on Agriculture)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### SHELL EGG HANDLING RULES

AN ACT to amend and reenact section 19-07-02 of the North Dakota Century Code, relating to authority of the department of health and consolidated laboratories and the commissioner of agriculture to adopt rules governing shell eggs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-07-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-07-02. Rulemaking power. The department may adopt, only upon approval of the commissioner of agriculture, after consultation with the poultry advisory board, may adopt appropriate rules pursuant to chapter 28-32 to establish registration of egg dealers and to establish standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation. The department commissioner of agriculture shall be guided in establishing such standards by United States department of agriculture regulations governing the grading and inspecting of eggs after consultation with the poultry advisory board. The state department of health and consolidated laboratories may adopt appropriate rules pursuant to chapter 28-32 to establish standards for proper labeling and temperature during the retail storage and sale of shell eggs.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 225

HOUSE BILL NO. 1232  
(Committee on Agriculture)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### COMMERCIAL FEED

AN ACT to create and enact section 19-13.1-14 of the North Dakota Century Code, relating to registration, labeling, and cooperation with other entities under the commercial feed laws; to amend and reenact sections 19-13.1-01, 19-13.1-02, 19-13.1-03, 19-13.1-04, 19-13.1-06, 19-13.1-07, 19-13.1-08, 19-13.1-09, 19-13.1-10, 19-13.1-12, and 19-13.1-13 of the North Dakota Century Code, relating to registration, licensing, labeling, inspection fees, and penalties; to repeal section 19-13.1-05 of the North Dakota Century Code, relating to labeling under the commercial feed laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-01. Enforcing official. This chapter shall be administered by the state department of health and consolidated laboratories ~~department~~, hereinafter referred to as the department.

SECTION 2. AMENDMENT. Section 19-13.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-02. Definitions of words and terms. When used in this chapter:

1. "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.
2. "Commercial feed" means all materials, except whole seeds unmixed or physically altered entire unmixed seeds when not adulterated within the meaning of section 19-13.1-07, which are distributed for use as feed or for mixing in feed, for animals other than man ~~except:~~
  - a. ~~Unmixed seed, whole or processed, made directly from the entire seed.~~
  - b. ~~Hay, straw, stover, silage, cobs, husks, and hulls when unground and when unmixed with other materials.~~
  - c. ~~Individual chemical compounds when not mixed with other materials.~~ The department, by rule, may exempt from this

definition, or from specific provisions of this chapter, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 19-13.1-07.

3. "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and where by such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.
4. "Customer-formula feed" means a mixture of commercial feeds or ~~materials~~ feed ingredients each batch of which ~~mixture~~ is mixed according to the specific instructions of the final purchaser, or contract feeder.
5. "Distribute" means to offer for sale, sell, exchange, or barter, commercial feed or customer-formula feed; or to supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder. "Distributor" means any person who distributes.
6. "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.
- ~~6-~~ 7. "Feed ingredient" means each of the constituent materials making up a commercial feed.
- ~~7-~~ 8. "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.
9. "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper or accompanying such commercial feed.
10. "Manufacture" means to grind, mix, or blend, or further process a commercial feed for distribution.
- ~~8-~~ 11. "Mineral feed" means a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.
- ~~9-~~ 12. "Official sample" means any sample of feed taken by the department and designated as "official" by the department.
- ~~10-~~ 13. "Percent" or "percentage" means percentage by weight.
- ~~11-~~ 14. "Person" includes individual, partnership, corporation, and association.

15. "Pet means any domesticated animal normally maintained in or near the household of the owner.
16. "Pet food" means any commercial feed prepared and distributed for consumption by pets.
- ~~17.~~ "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.
18. "Retail" means to sell to the consumer or final purchaser.
- ~~19.~~ "Sell" or "sale" includes exchange.
20. "Specialty pet food" means any commercial feed prepared and distributed for consumption by any animal normally maintained in confinement including, gerbils, hamsters, birds, fish, snakes, turtles, and zoo animals.
- ~~21.~~ "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 3. AMENDMENT. Section 19-13.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-03. Registration and license.

1. Each ~~commercial feed shall~~ pet food and specialty pet food must be registered before being distributed in this state; ~~provided, however, that customer formula feeds are exempt from registration. The application for registration shall must~~ be submitted on forms furnished by the department, ~~and, if the department so requests, shall also.~~ The application must be accompanied by a label ~~or and any other printed matter describing the each product and the registration fee of twenty-five dollars per product. Upon approval by the department a copy certificate of the registration shall must~~ be furnished to the applicant. ~~All registrations are considered permanent unless new registrations are called for by the department or unless canceled by the registrant. The application shall include the information required by subsections 2, 3, 4, and 5 of section 19-13.1-04. The department may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value; provided, that the label for each package shall state the specific ingredients which are in such package. Registrations are not transferable. All registrations expire on December thirty-first of each year. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product.~~
2. A distributor ~~shall is~~ not be required to register any brand of ~~commercial feed which pet food or specialty pet food that is already registered under this chapter by another person. Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.~~



3. Each person who manufactures commercial feed or whose name appears on the label of a commercial feed, other than pet food or specialty pet food, shall obtain a feed manufacturer's license from the department. Each person who sells commercial feed, other than pet food or specialty pet food, at retail, shall obtain a feed retailer's license from the department. The license application must be on forms furnished by the department and must be accompanied by a fee of fifty dollars for feed manufacturers or twenty-five dollars for feed retailers. If a manufacturer is also a retailer of feed, the retail license is waived. A feed retailer's license must be obtained for each location used by the retailer. All licenses expire on December thirty-first of each year. Licenses are not transferable. License renewal applications received after January thirty-first may be assessed a penalty fee of ten dollars for retailers and twenty dollars for manufacturers. This subsection does not apply to any person who custom manufactures feed only for another person at that person's request and for that person's own use.
4. Each feed manufacturer required to be licensed under this chapter shall submit and maintain a current label file of all the feeds distributed in the state with the department.
5. The department is empowered to may refuse of registration to register or license any application product or applicant not in compliance with the provisions of this chapter and to cancel any registration or license subsequently found not to be in compliance with any provision of this chapter; provided, however, that no registration shall or license may be refused or canceled until the registrant shall have or licensee has been given opportunity to be heard before the department and to amend the application in order to comply with the requirements of this chapter.

SECTION 4. AMENDMENT. Section 19-13.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-04. Labeling. Any commercial feed distributed in this state must be accompanied by a legible label bearing the ~~following~~ information prescribed by rule.

1. ~~The net weight.~~
2. ~~The product name and brand name, if any, under which the commercial feed is distributed.~~
3. ~~The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber; additional guarantees required to be or intentionally shown, must appear only in the guaranteed analysis section of the label after the guarantee for maximum crude fiber. For all mineral feeds and for those commercial feeds containing a level of added mineral ingredients established by regulation, the list must include the following, if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission~~

of the department. When any items are guaranteed, they are subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the department. The department may by regulation designate certain commercial feeds which need not be labeled to show guarantees for crude protein, crude fat, and crude fiber.

4. The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the department may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function. An ingredient statement is not required for single standardized ingredient feeds which are officially defined.
5. The name and principal address of the person responsible for distributing the commercial feed.

SECTION 5. AMENDMENT. Section 19-13.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-06. Inspection fees. There ~~shall~~ must be paid to the department for all commercial feeds and customer-formula feeds, except pet foods and specialty pet foods, distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. However, customer-formula feeds are hereby exempted if the inspection fee is paid on the commercial feeds which that they contain, and distribution of commercial feeds to manufacturers is hereby exempted if the commercial feeds so distributed are used solely in manufacture of feeds which that are registered. A distributor shall pay an annual registration fee of twenty five dollars for each commercial feed product distributed only in individual packages of ten pounds [4.54 kilograms] or less, and the distributor of such product shall not be required to pay the inspection fee on such packages of the product so registered. All fees received by the department, as provided for in this chapter, shall be properly recorded by it and forwarded monthly to the state treasurer. Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

1. File, not later than the fifteenth day of January and July of each year, a semiannual statement under oath, setting forth the number of net tons [kilograms] of commercial feeds distributed in this state during the preceding six months; and upon filing such statement shall pay the inspection fee. When more than one person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee.
2. Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feed distributed in this state, and the department shall have has the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute constitutes sufficient cause for the cancellation of all registrations licenses on file for the distributor.

SECTION 6. AMENDMENT. Section 19-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-07. Adulteration. No person ~~shall~~ may distribute an adulterated feed. A commercial feed or customer-formula feed ~~shall be deemed to be~~ is adulterated:

1. a. If it bears any poisonous, or deleterious, or nonnutritive ingredient has been found in sufficient amount to substantiate that may render it injurious to health when fed in accordance with directions for use on the label. If the substance is not an added substance, the commercial feed is not considered adulterated if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;
- b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 75-717; 52 Stat. 1049; 21 U.S.C. 346] other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive;
- c. If it is, or it bears or contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-929; 72 Stat. 1788; 21 U.S.C. 3481];
- d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a]. Except that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a] and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a];
- e. If it is, or it bears or contains any color additive that is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 75-717; 52 Stat. 1058; 21 U.S.C. 376]; or
- f. If it is, or it bears or contains any new animal drug which is unsafe within the meaning of section 512 of the Federal Food,

Drug, and Cosmetic Act as amended [Pub. L. 90-399; 82 Stat. 343; 21 U.S.C. 360b].

2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.
3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.
4. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.
5. If it contains viable weed seeds in amounts exceeding the limits which the department shall establish by rule **or regulation**.
6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.

SECTION 7. AMENDMENT. Section 19-13.1-08 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-08. Misbranding. No person ~~shall~~ may distribute misbranded feed. A commercial feed or customer-formula feed ~~shall be deemed to be~~ is misbranded:

1. If its labeling is false or misleading in any particular.
2. If it is distributed under the name of another feed.
3. If it is not labeled as required in section 19-13.1-04 and in ~~regulations~~ rules prescribed under this chapter.
4. If it purports to be or is represented as a commercial feed ingredient, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition of identity, if any, prescribed by regulation ~~rules~~ of the department; in the adopting of such regulations ~~rules~~ the department shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.
5. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

SECTION 8. AMENDMENT. Section 19-13.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-09. Inspection, sampling, analysis. It shall be the duty of the department to sample, inspect, make analyses of, and test commercial feeds and customer formula feeds distributed within this state at such time and place to such an extent as the department may deem necessary to determine whether such feeds are in compliance with the provisions of this chapter. The department is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer formula feeds and to records relating to their distribution. The methods of sampling and analysis shall be those adopted by the department from sources such as the journal of the association of official agricultural chemists.

The department, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in subsection 9 of section 19-13.1-02 and obtained and analyzed as provided for in this section. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the department to the distributor and the purchaser. Upon request within thirty days the department shall furnish to the distributor a portion of the sample concerned.

1. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the department, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under subsection 6 of section 19-13.1-07.
2. A separate notice must be given for each such inspection, but a notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle must be so notified.
3. If the officer or employee making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

4. If the owner, or agent of the owner, of any factory, warehouse, or establishment described in subsection 1, refuses to admit the officer or agent to inspect in accordance with this section, the department is authorized to obtain a warrant from any state court directing the owner or the owner's agent to submit the premises described in the warrant to inspection.
5. Any agent of the department is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds to enforce this chapter.
6. Sampling and analysis must be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.
7. The results of all analyses of official samples must be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the registrant may request a portion of the sample concerned within thirty days following receipt of the analysis.
8. In determining for administrative purposes whether a commercial feed is deficient in any component, the department must be guided by the official sample obtained and analyzed as provided for in this chapter.

SECTION 9. AMENDMENT. Section 19-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-10. Rules and regulations.

1. The department is hereby charged with the enforcement of this chapter, and is empowered to promulgate and may adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of efficiently administer this chapter. When promulgating adopting any rules or regulations under the authority of this section, the department shall follow the procedures provided for in chapter 28-32. Publicity concerning the public hearing shall must be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.
2. The official definitions of feed ingredients and official feed terms adopted and published by the association of American feed control officials and any amendments or supplements thereto may be adopted by rule as the official definitions.

SECTION 10. AMENDMENT. Section 19-13.1-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-13.1-12. Penalties.

1. Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who shall impede,

obstruct, hinder, or otherwise prevent or attempt to prevent the department from performing its duties in connection with the provisions of this chapter, shall be guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director of the consolidated laboratories branch of the department of health and consolidated laboratories, or the director's authorized agent, shall be accepted as prima facie evidence of the composition.

2. Nothing in this chapter may be construed as requiring the department to seek prosecution or the institution of seizure proceedings based on minor violations of the chapter when the department deems that the public interest will be best served by a suitable notice of warning in writing.
3. It shall be the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity shall be given the distributor to present the distributor's view to the department.
4. The department is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for Burleigh County for new trial of the issues bearing upon such act, order, or ruling, and upon such trial the court may issue and enforce such orders, judgments, or decrees as the court may deem proper, just, and equitable.

SECTION 11. AMENDMENT. Section 19-13.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-13. Publications. The department may publish, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state **as compared with the analyses guaranteed in the registration and on the label**. However, the information concerning production and use of commercial feeds shall not disclose the operations of any person.

SECTION 12. Section 19-13.1-14 of the North Dakota Century Code is created and enacted as follows:

19-13.1-14. Cooperation with other entities. The department may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations to carry out the purpose and provisions of this chapter.

SECTION 13. REPEAL. Section 19-13.1-05 of the North Dakota Century Code is repealed.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 226

HOUSE BILL NO. 1135  
(Committee on Agriculture)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### PESTICIDE REPORTING

AN ACT to create and enact sections 19-18-04.1 and 19-18-04.2 of the North Dakota Century Code, relating to use reporting requirements for pesticides, and protection of trade secrets; and to amend and reenact section 19-18-08 of the North Dakota Century Code, relating to penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 19-18-04.1 of the North Dakota Century Code is created and enacted as follows:

19-18-04.1. Reporting requirements. Upon request of the department, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed by March first. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

SECTION 2. Section 19-18-04.2 of the North Dakota Century Code is created and enacted as follows:

19-18-04.2. Protection of trade secrets.

1. Requirements. In submitting data required by this chapter, the applicant may:
  - a. Clearly mark any portions that in the applicant's opinion are trade secrets, commercial, or financial information; and
  - b. Submit the marked material separately from other material.
2. Information revealed. After consideration of the applicant's request submitted under subsection 1, the department may not make any information public which in the department's judgment contains or relates to trade secrets or to commercial or financial information obtained from an applicant. When necessary, information relating to formulas of products may be revealed to any state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department.



3. Notification. If the department proposes to release information that the applicant or registrant believes to be protected from disclosure under this section, the department shall notify the applicant or registrant by certified mail. The department may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

SECTION 3. AMENDMENT. Section 19-18-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-18-08. Penalties. Any person violating any provision of this chapter is guilty of an infraction. In any case where a registrant was issued a warning by the department pursuant to the provisions of this chapter, such registrant is, upon violating any provision of this chapter other than subsection 1 of section 19-18-03, guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred terminates automatically. A pesticide, the registration of which has been terminated, may not again be registered unless the pesticide, its labeling, and other material required to be submitted appear to the department to comply with all the requirements of this chapter. In addition to the criminal sanctions that may be imposed, a person found guilty of violating this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the department through an administrative hearing pursuant to chapter 28-32.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 227

SENATE BILL NO. 2451  
(Senators Kelsh, Wogsland)  
(Representatives Nowatzki, Gerntholz, Martin)

**ENVIRONMENT AND RANGELAND PROTECTION FUND**

AN ACT to create and enact two new sections to chapter 19-18 of the North Dakota Century Code, relating to the environment and rangeland protection fund and to create an advisory board; to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to registration of pesticides; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Environment and rangeland protection fund. The environment and rangeland protection fund is a special fund in the state treasury. The moneys in this fund may be used for rangeland improvement projects. These projects include noxious weed control; ground water testing, analysis, protection, and improvement; analysis of food products for residues of pesticides and other materials; and analysis and disposal of unusable pesticides and pesticide containers.

SECTION 2. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Advisory board - Creation - Duties. The state health officer shall appoint and consult with a six-member advisory board regarding the testing and analyzing of North Dakota food and agricultural products for pesticide residue. The board must consist of a representative of a food processing company, a representative of the North Dakota agricultural experiment station, two representatives of North Dakota farm organizations, an individual representing agribusiness organizations, and a representative of the commissioner of agriculture.

SECTION 3. AMENDMENT. Section 19-18-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file annually with the department an application for registration of such pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand of each product registered.
3. Be accompanied by a current label of each product so registered.

4. Be accompanied by an inspection a registration fee of twenty-five one hundred fifty dollars for each product registered. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section may be construed as applying to retail dealers selling pesticides. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses registrations. The state treasurer shall credit such moneys twenty-five dollars for each registered product to the general fund of the state in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
5. Be accompanied by a material safety data sheet.

The department may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product may not be offered for sale.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January first of each year, or within the same month such pesticides are first manufactured or sold within this state.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much thereof as may be necessary, to the department of health and consolidated laboratories for testing and analyzing ground water for contamination by pesticides and other harmful substances for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$485,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of noxious weed control for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. APPROPRIATION PRIORITY. If available moneys in the environment and rangeland protection fund are insufficient to fully fund all appropriations made from the fund by the fifty-second legislative assembly for the 1991-93 biennium, all other appropriations must be made from the fund prior to making the appropriation for noxious weed control as set forth in section 5 of this Act.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 228

HOUSE BILL NO. 1248  
 (Committee on Agriculture)  
 (At the request of the State Department of Health and  
 Consolidated Laboratories)

### FERTILIZER

AN ACT to create and enact sections 19-20.1-03.3, 19-20.1-03.4, and 19-20.1-05.1 of the North Dakota Century Code, relating to the registration, labeling, and storage of fertilizers; to amend and reenact subsection 3 of section 4-35.1-01, sections 19-20.1-01, 19-20.1-02, 19-20.1-03, 19-20.1-03.1, 19-20.1-03.2, 19-20.1-04, 19-20.1-06, 19-20.1-07, 19-20.1-08, 19-20.1-10, 19-20.1-11, 19-20.1-12, 19-20.1-13, 19-20.1-14, 19-20.1-15, 19-20.1-16, 19-20.1-17, and 19-20.1-18 of the North Dakota Century Code, relating to the registration, labeling, licensing, inspection, sampling, and analysis of fertilizers, tonnage fees, and penalties for fertilizers and soil amendments; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-35.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Fertilizer" means any ~~commercial~~ fertilizer as defined by ~~subsection 3 of~~ section 19-20.1-02.

SECTION 2. AMENDMENT. Section 19-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-01. Enforcing official. This chapter ~~shall~~ must be administered by the state ~~laboratories~~ department of health and consolidated laboratories of the state of North Dakota, hereinafter referred to as the department.

SECTION 3. AMENDMENT. Section 19-20.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-02. Definitions of words and terms. When used in this chapter:

- 00.1. "Auxiliary soil and plant substance" means any ~~chemical or biological substance or mixture of substances or device distributed in this state to be applied to soil, plants, or seeds for soil corrective purposes; or which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants; or which is intended to produce any chemical, biochemical, biological, or physical change in soil; except the following:~~

- a. Commercial fertilizers.
- b. Agricultural liming materials.
- c. Unmanipulated animal manures.
- d. Unmanipulated vegetable manures.
- e. Pesticides.

The term includes commercial fertilizers if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient, or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

1. "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer or, soil amendments, auxiliary soil and or plant substance amendments.
2. "Bulk" means in a nonpackaged form.
3. "Commercial fertilizer" means any substance containing one or more primary plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by department regulation. The term includes:
  - a. "Agricultural fertilizer" which must contain a minimum of fifteen percent primary plant nutrients.
  - b. "Specialty fertilizer" which is distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.
  - c. "Micronutrient" which contains essential chemical elements which are required at low levels for normal plant growth.
  - d. "Fertilizer material" is a commercial fertilizer which:
    - (1) Contains no more than one of the primary plant nutrients;
    - (2) Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
    - (3) Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration. "Compost" is a material derived primarily or entirely from biological decomposition of vegetative organic matter or animal manure that does not have inorganic fertilizer added other than to promote decomposition.

4. "Deficiency" means that amount of plant nutrient or active ingredient found by analysis is less than the amount guaranteed resulting from a lack of nutrient or active ingredients or from lack of uniformity.
- 4- 5. "Distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes, or blends commercial fertilizer or, soil amendments, auxiliary soil and or plant substances amendments, or who sells commercial or offers for sale fertilizer or, soil amendments, or auxiliary soil and plant substances amendments in this state.
6. "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other products excluded by department regulation.
7. "Fertilizer material" is a fertilizer which either:
- a. Contains no more than one of the primary plant nutrients;
  - b. Has approximately eighty-five percent of its primary plant nutrient content present in the form of a single chemical compound; or
  - c. Is derived from a plant or animal residue or byproduct or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification or concentration.
8. "Foliar fertilizer" means a fertilizer designed and ordinarily applied directly to growing plant foliage to stimulate further growth.
- 5- 9. "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in the same terms, order, and percentages as in the "guaranteed analysis".
- 6- Until the department prescribes the alternative form of "guaranteed analysis" in accordance with the provisions of this subsection, "guaranteed "Guaranteed analysis" shall mean means the minimum percentage of plant nutrients claimed in the following order and form:
- a. Total Nitrogen (N) - - - - - percent  
Available Phosphoric Acid ( $P_2O_5$ ) - - - - - percent  
Soluble Potash ( $K_2O$ ) - - - - - percent
  - b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

- c. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients, oxides, salt, chelates, etc., may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the department.
- d. Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds {45.36 kilograms} per ton {907.18 kilograms} when required by regulation. At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)    - - - - - percent

Available Phosphorus (P) - - - - - percent

Soluble Potassium (K)  - - - - - percent

Provided, however, that the effective date of said regulation shall be not less than six months following the issuance thereof; and provided, further, that for a period of two years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

- e. The minimum quantity of each active ingredient contained in soil amendments, auxiliary soil and plant substances, shall be guaranteed in terms approved by the department or prescribed by its rules.

~~6.~~ 10. "Inert" means any ingredient not active.

11. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer, soil amendment, or plant amendment.

~~7.~~ 12. "Label" means all written, printed, or graphic matter upon or accompanying any commercial fertilizer or soil amendment, auxiliary soil and plant substance, or advertisements, brochures, posters, or plant amendment and any printed material or media announcements used in promoting the sale thereof.

- ~~8-~~ 13. "Licensee" means any person licensed by the department ~~as a distributor of agricultural~~ to distribute a fertilizer, soil amendment, or ~~auxiliary soil and plant substance~~ amendment.
14. "Manipulated" means fertilizers, soil amendments, or plant amendments that are manufactured, blended, or mixed, or animal or vegetable manures that have been treated in any manner, including mechanical drying, grinding, pelleting, and other means, or by adding other chemicals or substances.
15. "Micronutrient" means a fertilizer that contains only essential chemical elements that are required at low levels for normal plant growth.
- ~~9-~~ 16. "Mobile mechanical unit" means any portable machine or apparatus used to blend, mix, or manufacture ~~fertilizer materials~~ fertilizers, soil ~~amendment,~~ ~~auxiliary soil and~~ amendments, or plant ~~substance~~ amendments.
- ~~10-~~ 17. "Official sample" means any sample of ~~commercial~~ fertilizer ~~or,~~ soil amendment, ~~auxiliary soil and~~ or plant ~~substance~~ amendment, taken by the department and designated as "official" by the department.
18. "Organic" in reference to fertilizer nutrients refers only to naturally occurring substances generally recognized as the hydrogen compounds of carbon and their derivatives or synthetic products of similar composition with a water insoluble nitrogen content of at least sixty percent of the guaranteed total nitrogen.
- ~~11-~~ 19. "Percent" or "percentage" means the percentage by weight.
20. "Plant amendment" means a substance applied to plants or seeds which is intended to improve germination, growth, yield, product quality, reproduction, flavor, or other desirable characteristics of plants except fertilizers, unless the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient, or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.
21. "Plant nutrient" means a nutrient generally recognized as beneficial for plant growth, including nitrogen, phosphorus, potassium, calcium, magnesium, sulfur, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.
- ~~12-~~ 22. "Primary plant nutrients" are nitrogen, phosphoric acid, and potash.
- ~~13-~~ 23. "Registrant" means the person who registers ~~commercial fertilizer~~ or fertilizers, soil amendments, ~~auxiliary soil and~~ or plant ~~substance~~ amendments under the provisions of this chapter.
- ~~14-~~ 24. "Sell" when applied to ~~commercial fertilizer~~ or fertilizers, soil amendments, ~~auxiliary soil and~~ or plant ~~substance~~ amendments includes:



- a. The act of selling, transferring ownership.
- b. The offering and exposing for sale, exchange, or distribution.
- c. Giving away.
- d. Receiving, accepting, holding, or ~~possession~~ possessing for sale, exchange, or distribution.

~~+5-~~ 25. "Small package fertilizer" means fertilizer sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less.

~~+6-~~ 26. "Soil amendment" means any substance which is intended to improve the ~~physical, chemical, biological, or other~~ characteristics of the soil ~~to improve crop production, except the following: commercial fertilizers, agricultural liming materials, unmanipulated animal manures, unmanipulated vegetable manures, and pesticides.~~ The term shall include ~~commercial~~ fertilizer if the fertilizer is represented to contain, as an active ingredient, a substance other than a primary plant nutrient or micronutrient or is represented as promoting plant growth by supplying something other than a primary plant nutrient or micronutrient.

27. "Specialty fertilizer" means a fertilizer distributed primarily for nonfarm use.

~~+7-~~ 28. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 4. AMENDMENT. Section 19-20.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Registration. Each brand and grade of ~~commercial fertilizer sold as small package fertilizer or specialty fertilizer, each, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, auxiliary soil and or plant substance, and each brand and grade of fertilizer material except unmanipulated animal and vegetable manures, shall~~ amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration ~~shall~~ must be submitted to the department on a form ~~prescribed~~ furnished by the department and ~~shall~~ must be accompanied by a fee of twenty-five dollars. Upon approval by the department, a ~~copy of the certificate of registration shall~~ must be furnished to the applicant setting forth the information to be set out in the product label required by this chapter. All registrations expire on June thirtieth of each year. A distributor ~~shall~~ is not be required to register any brand of ~~commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment~~ which is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

SECTION 5. AMENDMENT. Section 19-20.1-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required. No person ~~shall sell at retail agricultural~~ may distribute any fertilizer, soil amendment, or ~~auxiliary soil~~

and plant substance amendment in this state without first obtaining a distributor's license from the department. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license shall must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license shall must be submitted on a form prescribed furnished by the department, and shall must be accompanied by a fee of fifty dollars. All licenses shall expire on June thirtieth of each year. Licenses shall are not be transferable, and each license shall must be conspicuously posted at each location and shall must accompany each mobile mechanical unit operating in the state.

SECTION 6. AMENDMENT. Section 19-20.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.2. Proof of effectiveness. The department may require an applicant or registrant to furnish proof of claims made for any product covered by this chapter and may require proof of value when used as directed or recommended. The department shall rely on replicate, or the data derived therefrom, performed by a reputable investigator. The experimental data must be obtained from scientifically designed and reported studies conducted under conditions similar to those in this state under which the product is intended to be used. The department may accept or reject other sources of proof as additional evidence.

SECTION 7. Section 19-20.1-03.3 of the North Dakota Century Code is created and enacted as follows:

19-20.1-03.3. Protected information. In submitting data required by this chapter, the applicant may clearly mark any portions that in the applicant's opinion are trade secrets or commercial or financial information and submit the marked material separately from other material.

After consideration of the applicant's request, the department may decide not to allow the information to become public which the department determines to contain or relate to trade secrets or to commercial or financial information obtained from an applicant. If necessary, information relating to formulas of products may be revealed to a state or federal agency consulted with similar protection of trade secret authority and may be revealed at a public hearing or in findings of facts issued by the department. If the department proposes to release information that the applicant or registrant believes to be protected from disclosure, the department shall notify the applicant or registrant by certified mail. The department may not make the information available for inspection until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may begin an action in an appropriate court for a declaratory judgment as to whether the information is subject to protection under this section.

SECTION 8. Section 19-20.1-03.4 of the North Dakota Century Code is created and enacted as follows:

19-20.1-03.4. Guaranteed analysis. Until the department prescribes the alternative form of guaranteed analysis in accordance with the provisions of this section, guaranteed analysis must be claimed in the following order and form:

1. Total Nitrogen (N) percent

Available Phosphoric Acid ( $P_2O_5$ ) \_\_\_\_\_ percent

Soluble Potash ( $K_2O$ ) \_\_\_\_\_ percent

2. For unacidulated mineral phosphatic materials and basic slag, bone, tannage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness, or both, may also be guaranteed.
3. Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for such other nutrients must be expressed in the form of the element. The sources of other nutrients including oxides, salt, and chelates may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and rules prescribed by the department.
4. The department may, by rule, require potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds [45.36 kilograms] per ton [907.18 kilograms].
5. At any time after July 1, 1967, when the department finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in the elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by rule that the guaranteed analysis be in the following form:

Total Nitrogen (N) \_\_\_\_\_ percent

Available phosphorus (P) \_\_\_\_\_ percent

Soluble Potassium (K) \_\_\_\_\_ percent

The effective date of a rule under this subsection may not be less than six months following the issuance of the rule and for a period of two years following the effective date of the rule the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. After the effective date of a rule issued under this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium constitutes the grade.

6. The guaranteed analysis of a soil amendment or plant amendment must be an accurate statement of composition including the percentages of each ingredient. If the product is a microbiological product, the number of viable microorganisms per milliliter for a liquid or the number of viable microorganisms per gram for a dry product must also be listed.

SECTION 9. AMENDMENT. Section 19-20.1-04 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-04. Labeling.

1. Every product registered pursuant to this chapter shall Any fertilizer, soil amendment, or plant amendment distributed in this state in containers must have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by the department in the registration thereof.
2. If distributed in bulk, a written or printed statement showing the net weight, brand and grade, guaranteed analysis, name and address of the distributor, and the sources from which the nitrogen, phosphorus, and potassium are derived ~~shall~~ must accompany delivery and be supplied to the purchaser at time of delivery.
3. A ~~commercial~~ fertilizer, formulated according to specifications which that are furnished by a consumer prior to mixing, ~~shall~~ must be labeled to show the net weight, guaranteed analysis or number of pounds [kilograms] of each plant nutrient ~~contained therein it~~ contains, and the name and address of the distributor.
4. The department may require the labels of specialty fertilizer sold in packages of fifty pounds [22.68 kilograms] or more, or sold in bulk, to contain the prominent statement "Not intended for farm use" prominently placed thereon.

SECTION 10. Section 19-20.1-05.1 of the North Dakota Century Code is created and enacted as follows:

19-20.1-05.1. Fertilizer in bulk storage. Fertilizer in bulk storage must be identified with a label attached to the storage bin or container stating the appropriate grade or guaranteed analysis.

SECTION 11. AMENDMENT. Section 19-20.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There ~~shall~~ must be paid to the department for all ~~commercial~~ fertilizers, soil amendments, or ~~auxiliary soil and plant substances, amendments~~ distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]; ~~provided, that sales. Sales to manufacturers or exchanges between them are hereby exempted exempt from the inspection fee.~~ Fees ~~so~~ collected ~~shall~~ under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of ~~commercial fertilizer fertilizers,~~ soil amendments, or ~~auxiliary soil and plant substances, amendments~~ sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less ~~shall~~ be exempt from the provisions of this section. ~~Where If~~ a person sells ~~commercial~~ fertilizer, soil amendments, or ~~auxiliary soil and plant substances amendments~~ in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] ~~shall be is~~

subject to the same inspection fee of twenty cents per ton [907.18 kilograms] as provided in this chapter.

Every licensed person who distributes a ~~commercial~~ fertilizer, soil amendment, or ~~auxiliary soil and plant substance amendment~~ to a nonlicensed person in this state shall file with the department, on forms furnished by the department, a semiannual statement for the periods ending December thirty-first and June thirtieth, setting forth the number of net tons [kilograms] of each ~~commercial~~ fertilizer, soil amendment, or ~~auxiliary soil and plant substance amendment~~ so distributed in this state during such period. The statement is due on or before ~~the fifteenth day the end of the~~ month following each semiannual period. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made within thirty days after the end of the semiannual period, a collection fee amounting to ten percent, minimum ten dollars, of the amount shall be assessed against the licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the licensee.

SECTION 12. AMENDMENT. Section 19-20.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-07. Inspection fees and tonnage reports. When more than one person is involved in the distribution of a registered product, the last person who has the product registered under section 19-20.1-03 and who distributes to a nonregistrant ~~dealer, or consumer,~~ is responsible for reporting the tonnage and paying the inspection fee; ~~unless the reporting and paying of fees have been made by a prior distributor of the product.~~ The department may verify the records on which the statement of tonnage is based.

SECTION 13. AMENDMENT. Section 19-20.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-08. Inspection, sampling, analysis. It shall be the duty of the department to sample, inspect, make analyses of, and test ~~commercial fertilizers and soil amendments, auxiliary soil and plant substance amendments~~ distributed within this state at time and place and to such an extent as the department may deem necessary to determine whether such ~~commercial fertilizers or soil amendments~~ products are in compliance with the provisions of this chapter. The department is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to ~~commercial fertilizers or soil amendments, auxiliary soil and plant substance~~ products subject to the provisions of this chapter and the rules pertaining ~~thereto~~ to this chapter. The methods of analysis and sampling ~~shall must~~ be those adopted by the department from sources such as the A.O.A.C. journal. In cases not covered by such methods, or if methods are available in which improved applicability has been demonstrated, the department may adopt such appropriate methods from other sources.

In sampling a lot of fertilizer, a single package may constitute the official sample. The department, in determining for administrative purposes whether any ~~commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment~~ is deficient, shall be guided solely by the official sample obtained and analyzed by the department. The results of official analysis of any ~~commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment~~ which has been found to be subject to penalty or other legal action shall be forwarded by the department to the

registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the department, the report ~~shall become~~ becomes official. Official samples found to be deficient must be retained by the laboratory for thirty days from issuance of the analytical report. Upon request the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

SECTION 14. AMENDMENT. Section 19-20.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-10. ~~False or misleading statements~~ Misbranding. A ~~commercial fertilizer, soil amendment, or auxiliary soil and plant substance amendment~~ is misbranded if false or misleading statements concerning the product are disseminated in any manner or by any means, if it carries a false or misleading statement on the container, on the label attached to the container, or if false or misleading statements concerning the fertilizer, soil amendment, or auxiliary soil and plant substance are disseminated in any manner or by any means or labeling, if it is distributed under the name of another product, if it is not labeled as required by section 19-20.1-04 and in accordance with rules adopted under this chapter, and if it purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials. It shall be unlawful to distribute a misbranded fertilizer, soil amendment, or auxiliary soil and plant substance amendment.

SECTION 15. AMENDMENT. Section 19-20.1-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-11. Publications. The department may publish in such forms as it may deem proper:

1. Information concerning the distribution of ~~commercial fertilizers and, soil amendments, auxiliary soil and plant substance amendments.~~
2. Results of analyses based on official samples of ~~commercial fertilizers and, soil amendments, auxiliary soil and plant substance amendments~~ distributed within the state as compared with the analyses guaranteed under sections 19-20.1-03 and 19-20.1-04.

SECTION 16. AMENDMENT. Section 19-20.1-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-12. ~~Rules and regulations.~~ For the enforcement of this chapter, the department is authorized to ~~prescribe~~ adopt and enforce such ~~rules, regulations, and tolerances~~ relating to the labeling, investigational allowances, definitions, records, licensing, inspection, analysis, labeling, storage, and distribution of commercial fertilizers and, soil amendments, and plant amendments as the state department of health and consolidated laboratories may find necessary to carry into effect the full intent and meaning of this chapter. When promulgating ~~adopting~~ any rules or regulations

under the authority of this section, the department shall follow the procedures provided in chapter 28-32.

SECTION 17. AMENDMENT. Section 19-20.1-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-13. Short weight Deficiencies.

1. A product is deficient if one or more of its guaranteed primary plant nutrients or other guaranteed active ingredients falls below the investigational allowances and compensations as established by rule or if the overall index value of the fertilizer is shown below the level established by rule.
2. A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.
3. For the purpose of determining the commercial index value to be applied, the department shall determine at least annually the values per unit of nitrogen, available phosphoric acid, and soluble potash in fertilizers in this state.
4. If any commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment in the possession of the consumer is found by the department to be short in weight, the registrant of said commercial fertilizer or soil amendment, auxiliary soil and plant substance the product shall within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

SECTION 18. AMENDMENT. Section 19-20.1-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-14. Cancellation of registrations. The department is authorized and empowered to may cancel the registration of any brand of commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment and to may cancel the license of any distributor or to may refuse to register any brand of commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment or may refuse to license any distributor as herein provided, upon satisfactory evidence that the registrant, licensee, or distributor has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder; provided, that no adopted under this chapter. No registration or license shall may be revoked or refused without opportunity for hearing given by the department.

SECTION 19. AMENDMENT. Section 19-20.1-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-15. "Stop-sale" orders. The department may issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment and an order to hold at a designated place when the department finds said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment is being offered

or exposed for sale in violation of any of the provisions of this chapter or a rule adopted under this chapter until the law or rule has been complied with and said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment is released in writing by the department or said the violation has been otherwise legally disposed by written authority. The department shall release the commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment so withdrawn when the requirements of the provisions of this chapter and the rules adopted under this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 20. AMENDMENT. Section 19-20.1-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-16. Seizure, condemnation, and sale. Any lot of commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment not in compliance with the provisions of this chapter shall be and the rules adopted under this chapter is subject to seizure on complaint of the department to the district court in the county in which said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment is located. In the event the court finds the said commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment to be in violation of this chapter or a rule adopted under this chapter and orders its condemnation, it shall must be disposed of in any manner consistent with the quality of the commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment and the laws of the state; provided, that in. In no instance shall may the disposition of said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment or for permission to process or relabel said commercial the fertilizer or, soil amendment, auxiliary soil and or plant substance amendment to bring it into compliance with this chapter and the rules adopted under this chapter.

SECTION 21. AMENDMENT. Section 19-20.1-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-17. Violations - Penalty.

1. If it shall appear appears from the examination of any commercial fertilizer or, soil amendment, auxiliary soil and or plant substance amendment that any of the provisions of this chapter or the rules issued thereunder adopted under this chapter have been violated, the department shall cause notice of the violations to be given to the registrant, licensee, manufacturer, distributor, or possessor from whom said the sample was taken. Any person so notified shall must be given opportunity to be heard under such rules as may be prescribed adopted by the department. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules issued thereunder adopted under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.



2. Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder adopted under this chapter or who shall impede, obstruct, hinder, or otherwise prevent or attempt impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department in the performance of its duty in connection with the provisions of this chapter, shall be or the rules adopted under this chapter is guilty of a class A misdemeanor. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizers or, soil amendments, auxiliary soil and or plant substance amendments, a certified copy of the official analysis signed by the director of the consolidated laboratories branch of the department shall or the director's assigned agent must be accepted as prima facie evidence of the composition.
3. Nothing in this chapter may be construed as requiring the department to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the chapter when the director believes that the public interests will be best served by a suitable notice of warning in writing.
4. It shall be is the duty of each state's attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
5. The department is hereby authorized to may apply for and the court to may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated adopted under the this chapter notwithstanding the existence of other remedies at law. Said An injunction to under this section must be issued without bond.

SECTION 22. AMENDMENT. Section 19-20.1-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.1-18. Exchanges between manufacturers. Nothing in this chapter shall may be construed to restrict or avoid sales or exchanges of commercial fertilizers, soil amendments, or auxiliary soil and plant substances amendments to each other by importers, manufacturers, or manipulators who mix fertilizer materials, soil amendments, or auxiliary soil and plant substances amendments for sale or as preventing the free and unrestricted shipments of commercial fertilizer, soil amendments, or auxiliary soil and plant substances amendments to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 229

SENATE BILL NO. 2177  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

**ANHYDROUS AMMONIA SAFETY RULES**

AN ACT to amend and reenact section 19-20.2-01 of the North Dakota Century Code, relating to the regulation of anhydrous ammonia facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.2-01. Anhydrous ammonia safety rules. The Except as otherwise required by law, the commissioner of agriculture shall adopt rules necessary to implement this chapter and adopt the 1989 American national standard safety requirements for the storage and handling of anhydrous ammonia, except as otherwise required by this chapter, and other rules necessary to implement this chapter sections 2.5, 5.2.1, and 5.2.2.2 of the 1989 American national standard safety requirements are adopted as follows:

1. (2.5) Refers to paragraphs U-68, U-69, U-200, or U-201 of section VIII of the boiler and pressure vessel code of the American society of mechanical engineers, 1949 edition, or to section VIII division of the boiler and pressure vessel code of the American society of mechanical engineers, 1950 edition, through the current edition including addenda and applicable code case interpretations.

Where referenced in this standard only division I of the American society of mechanical engineers code applies except that paragraphs UG-125 through UG-135 and paragraph UW-2 do not apply.

2. (5.2.1) Containers used with systems covered in sections 6, 9, 11, and 12 must be made of steel or other material compatible with ammonia, and tested in accordance with the current American society of mechanical engineers code. An exception to the American society of mechanical engineers code requirements is that construction under table UW 12 at a basic joint efficiency of under eighty percent is not authorized.
3. (5.2.2.2) Steels used in fabricating pressure-containing parts of a container must have a tensile strength no greater than a nominal seventy-five thousand pounds per square inch [517110 kilopascals], except this does not apply to sections 8, 9, and 10.

Approved April 2, 1991  
Filed April 4, 1991

# GAME, FISH, PREDATORS, AND BOATING

## CHAPTER 230

SENATE BILL NO. 2038  
(Legislative Council)  
(Interim Game and Fish Committee)

### HUNTING WHILE INTOXICATED

AN ACT to provide for implied consent to chemical testing for purposes of determining intoxication while being afield with a gun or other firearm or bow and arrow; to create and enact a new subsection to section 20.1-02-15.1 of the North Dakota Century Code, relating to the powers of the game and fish commissioner, deputy commissioner, and game wardens; to amend and reenact sections 20.1-01-02 and 20.1-01-06 of the North Dakota Century Code, relating to being afield with a gun or other firearm or bow and arrow while intoxicated; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-02. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Afield" means being away from one's home or camp. The term does not include driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance.
2. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified.
- ~~2-~~ 3. "Associated equipment" means:
  - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
  - b. Any accessory or equipment for, or appurtenance to, a boat; and
  - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but
  - d. Excluding radio equipment.
- ~~3-~~ 4. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
- ~~4-~~ 5. "Boat" means any vessel:

\* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2043, chapter 233; and by section 3 of Senate Bill No. 2050, chapter 231.

- a. Manufactured or used primarily for noncommercial use;
  - b. Leased, rented, or chartered to another for the latter's noncommercial use; or
  - c. Engaged in the carrying of six or fewer passengers.
- ~~5-~~ 6. "Commissioner" means the state game and fish commissioner.
- ~~6-~~ 7. "Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.
- ~~7-~~ 8. "Department" means the state game and fish department.
- ~~8-~~ 9. "Deputy commissioner" means the deputy state game and fish commissioner.
- ~~9-~~ 10. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
- a. The destruction, drastic modification, or severe curtailment of its habitat.
  - b. Its overutilization for scientific, commercial, or sporting purposes.
  - c. The effect on it of disease, pollution, or predation.
  - d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
  - e. Any combination of the foregoing factors.
- The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~10-~~ 11. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
- ~~11-~~ 12. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes.
- ~~12-~~ 13. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
- ~~13-~~ 14. "Guide" or "outfitter" means any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or

to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents are not entitled to act as guides or outfitters in this state.

- ~~14-~~ 15. "Gun dogs" includes any dog used to hunt protected wildlife.
- ~~15-~~ 16. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
- ~~16-~~ 17. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
- ~~17-~~ 18. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
- ~~18-~~ 19. "Manufacturer" means any person engaged in:
- a. The manufacture, construction, or assembly of boats or associated equipment.
  - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
  - c. The importation into the state for sale of boats, associated equipment, or components thereof.
- ~~19-~~ 20. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
- ~~20-~~ 21. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
- ~~21-~~ 22. "Operate" means to navigate or otherwise use a motorboat or a vessel.
- ~~22-~~ 23. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- ~~23-~~ 24. "Passenger" means every person carried on board a vessel other than:
- a. The owner or his representative.

- b. The operator.
  - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.
  - d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
- ~~24-~~ 25. "Person" includes every partnership, association, and corporation. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
- ~~25-~~ 26. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
- ~~26-~~ 27. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the commissioner's approval, the commissioner may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.
- ~~27-~~ 28. "Public waters" means waters to which the general public has a right to access.
- ~~28-~~ 29. "Resident" means any person who has actually lived within this state or maintained that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.
- ~~29-~~ 30. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
- ~~30-~~ 31. "Retrieve" means to have taken possession and made ready for transportation.
- ~~31-~~ 32. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.
- ~~32-~~ 33. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
- ~~33-~~ 34. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
- ~~34-~~ 35. "Small game" includes all game birds and tree squirrels.

- ~~35-~~ 36. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
- ~~36-~~ 37. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~37-~~ 38. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
- ~~38-~~ 39. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- ~~39-~~ 40. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
- ~~40-~~ 41. "Waters" when not qualified means waters not open to the general public.
- ~~41-~~ 42. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.
- ~~42-~~ 43. "Wildlife" means any member of the animal kingdom including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

SECTION 2. AMENDMENT. Section 20.1-01-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-06. ~~Going~~ Being afield with gun or other firearm ~~when or bow and arrow while~~ intoxicated prohibited - Penalty. No person ~~shall go~~ may be afield at any time, with a gun or other firearm, ~~when or a bow and arrow, while~~ intoxicated or under the influence of alcoholic beverages or drugs. Upon conviction of a person for violating this section, ~~his~~ that person's hunting license ~~shall become~~ is void. The judge of the convicting court shall take the license, mark it revoked, and send it to the department. If the conviction is reversed on appeal, the license ~~shall~~ must be restored to the defendant. Game wardens, including special wardens, ~~shall~~ have the authority of a general peace officer in the enforcement of this section. In addition to the penalty provided in this chapter, any person convicted of committing a subsequent offense under this section ~~shall be~~ is ineligible for a hunting license in this state for two years from and after ~~such~~ the conviction.

SECTION 3. A new subsection to section 20.1-02-15.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To enforce sections 4 through 18 of this Act.

SECTION 4. Implied consent to determine alcoholic and drug content of blood. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to sections 4 through 18, to a chemical test of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in sections 4 through 18, "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under sections 4 through 18. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 7, under arrest and informing that person that the person is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of sections 4 through 18, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in a revocation for up to four years of the person's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under sections 4 through 18.

SECTION 5. Chemical test of hunter in serious bodily injury or fatal accident. Notwithstanding section 4 or 9, when a hunter is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the hunter is in violation of section 20.1-01-06, the hunter may be compelled by a game warden or a police officer to submit to a chemical test.

SECTION 6. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a game warden or a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden



or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 7. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal, is deemed not to have withdrawn the consent provided by section 4 and the chemical test may be given.

SECTION 8. Action following chemical test result for a hunter. If a person submits to a chemical test under section 4, 6, or 7 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after being afield with a gun or other firearm or a bow and arrow, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny hunting privileges in this state.
2. If a chemical test administered under section 4 or 7 was by saliva or urine sample or by drawing blood as provided in section 6 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the commissioner. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the commissioner a certified written report in the form required by the commissioner and the person's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the person had been

afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06, that the person was lawfully arrested, that the person was chemically tested under sections 4 through 18, and that the results of the test show that the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the game warden or officer.

SECTION 9. Revocation of privilege to hunt upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 4 or 18, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the commissioner's official notification to the person of the commissioner's intent to revoke hunting privileges in this state and of the hearing procedures under sections 4 through 18. The commissioner, upon the receipt of that person's hunting license and a certified written report of the game warden or law enforcement officer in the form required by the commissioner, forwarded by the warden or officer within five days after issuing the statement of intent and taking possession of the person's hunting license, showing that the warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06 or, for purposes of section 18, had reason to believe and had, through personal observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 4 or 18, shall revoke that person's hunting privileges for the appropriate period under this section, or if the person is without hunting privileges in this state, the commissioner shall deny to the person hunting privileges for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in sections 4 through 18. In the revocation of the person's hunting privileges the commissioner shall give credit for time in which the person was without hunting privileges after the day of the person's refusal to submit to the chemical test. The period of revocation or denial of hunting privileges under this section is:
  - a. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have not previously been suspended, revoked, or issuance of a license denied for a violation of sections 4 through 18 or section 20.1-01-06.

- b. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have been once previously suspended, revoked, or issuance of a license denied for a violation of sections 4 through 18 or section 20.1-01-06.
  - c. Four years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance of a license denied under sections 4 through 18, or for a violation of section 20.1-01-06 and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's hunting privileges are not subject to revocation under this section if:
- a. No administrative hearing request is made under section 11;
  - b. The person mails an affidavit to the commissioner within ten days after the game warden or law enforcement officer issues the statement of intent and takes possession of that person's hunting license. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
    - (2) Agrees that the person's hunting privileges must be suspended;
    - (3) Acknowledges the right to a section 11 administrative hearing and section 12 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's hunting privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license; and

- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the return or reinstatement of the person's hunting privileges.
3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-01-06 to the commissioner within ten days after it is ordered. Upon receipt of the order, the commissioner immediately shall revoke the person's hunting privileges as provided under this section without providing an administrative hearing.

SECTION 10. Administrative sanction for being afield with a gun or other firearm or a bow and arrow while having certain drug concentrations.

1. After the receipt of a person's hunting license, if taken under section 8, and the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 11, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had reasonable grounds to arrest the person and chemical test results show that the arrested person had been afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after being afield with a gun or other firearm or a bow and arrow, the commissioner shall suspend the person's hunting privileges as follows:
  - a. For one year if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-01-06 or the person's hunting privileges have not previously been suspended or revoked under sections 4 through 18.
  - b. For two years if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-01-06 or the person's hunting privileges have once previously been suspended or revoked under sections 4 through 18.
  - c. For three years if the person's record shows that within the five years preceding the date of the arrest, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance denied under sections 4 through 18, or for a violation of section 20.1-01-06, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. In the suspension of the person's hunting privileges the commissioner shall give credit for the time the person was without a hunting license after the day of the offense.

SECTION 11. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 9 or 10, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ten days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license. The hearing must be held within twenty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license, but the hearing officer may extend the hearing to within thirty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license if good cause is shown.
2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 4 or 7 and, if applicable, section 6; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns revocation of hunting privileges for refusing to submit to a chemical test under section 4 or 18, the hearing must be before a hearing officer assigned by the commissioner at a time and place designated by the commissioner. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 4 may cover only the issues of whether a game warden or law enforcement officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; and whether that person refused to submit to the chemical test. The scope of a hearing for refusing to submit to a chemical test under section 18 may cover only the issues of whether the game warden or law enforcement officer had reason to believe and had, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof and whether the person refused to submit to the

onsite screening test. Whether the person was informed that the privilege to hunt would be revoked or denied for refusal to submit to the test is not an issue.

4. At a hearing under this section, the regularly kept records of the commissioner may be introduced. Those records establish prima facie their contents without further foundation. For purposes of sections 4 through 18, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the commissioner from the office of the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the commissioner from a certified breath test operator, and any copy of a certified copy of a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the commissioner from the office of the state toxicologist or the clerk of district court, are regularly kept records of the commissioner.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the commissioner's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the commissioner shall return the person's hunting license.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on the revocation, suspension, or denial of hunting privileges will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the commissioner, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the commissioner's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 12.

SECTION 12. Judicial review. Any person whose hunting privileges have been suspended, revoked, or denied by the decision of the hearing officer under section 11 may appeal within seven days after the date of the hearing under section 11 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-15, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the

county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 13. Credit for suspension of hunting privileges. After conviction of a person for violating section 20.1-01-06, the commissioner, in suspending the person's hunting privileges, shall give credit for the time in which the suspension or revocation of hunting privileges has been or is being imposed under sections 4 through 18 in connection with the same offense.

SECTION 14. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. A person having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.
4. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.

5. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk of the district court in each county and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.
7. Copies of the records referred to in subsections 5 and 6, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the office of the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under sections 4 through 18.
9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.



10. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

SECTION 15. Proof of refusal admissible in any action or proceeding. If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was afield with a gun or other firearm or bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof.

SECTION 16. Effect of evidence of chemical test. Sections 4 through 18 do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

SECTION 17. Liability. Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

SECTION 18. Screening tests. Any person who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the person's breath for the purpose of estimating the alcohol, other drug, or a combination thereof content of the person's blood upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof. A person may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 4. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to four years of that person's hunting privileges. If the person refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the person's hunting privileges in the same manner as provided in section 9, and a hearing as provided in section 11 and a judicial review as provided in section 12 must be available. However, the commissioner may not revoke a person's hunting privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 4 for the same incident. This section does not supersede any provisions of sections 4 through 17, nor does any provision of sections 4 through 17 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the state toxicologist as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a person's blood, breath, saliva, or urine.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 231

SENATE BILL NO. 2050  
(Legislative Council)  
(Interim Game and Fish Committee)

### GAME AND FISH DEPARTMENT DIRECTOR

AN ACT to amend and reenact section 4-01-17.1, subsection 3 of section 10-06-04.3, sections 20.1-01-02, 20.1-01-03, 20.1-01-04, 20.1-01-26, 20.1-01-28, subsection 3 of section 20.1-01-30, sections 20.1-02-01, 20.1-02-02, 20.1-02-03, 20.1-02-04, 20.1-02-05, 20.1-02-06, 20.1-02-07, 20.1-02-09, 20.1-02-10, 20.1-02-11, 20.1-02-14, 20.1-02-14.1, 20.1-02-15, 20.1-02-15.1, 20.1-02-16, 20.1-02-16.1, 20.1-02-16.2, 20.1-02-16.3, 20.1-02-17, subsection 1 of section 20.1-02-17.1, sections 20.1-02-18.1, 20.1-02-18.4, 20.1-02-19, 20.1-02-25, 20.1-03-01.1, 20.1-03-02, subsection 5 of section 20.1-03-06, subsections 5 and 6 of section 20.1-03-10, sections 20.1-03-12.1, 20.1-03-15, 20.1-03-16, 20.1-03-17, 20.1-03-18, 20.1-03-19, 20.1-03-21, 20.1-03-22, 20.1-03-23, subsection 3 of section 20.1-03-25, sections 20.1-03-27, 20.1-03-30, 20.1-03-31, 20.1-04-03, 20.1-04-04, 20.1-05-07, 20.1-06-04, 20.1-06-05, 20.1-06-07, subsections 1 and 2 of section 20.1-06-10, sections 20.1-06-12, 20.1-06-13, 20.1-06-14, 20.1-06-15, 20.1-06-16, 20.1-06-17, 20.1-07-02, subsection 4 of section 20.1-07-03.1, sections 20.1-07-05, 20.1-08-02, 20.1-08-04.5, 20.1-09-02, 20.1-09-03, 20.1-09-04, 20.1-09-05, 20.1-10-01, 20.1-10-04, 20.1-11-02, 20.1-11-04, 20.1-11-05, 20.1-11-06, 20.1-11-07, 20.1-11-08, 20.1-11-09, 20.1-11-10, 20.1-12-02, 20.1-12-03, 20.1-12-04, 20.1-12-05, 20.1-12-06, 20.1-12-07, 20.1-12-08, 20.1-12-09, 20.1-13-04, 24-02-37.1, 37-07.3-04, 55-01-01, 55-08-02.1, 55-11-10, 57-02-08.4, 57-02-08.6, 57-02.1-02, 57-02.1-03, 57-02.1-04, 57-02.1-05, subsection 2 of section 61-31-02, subsection 4 of section 61-31-05, sections 61-31-08, 61-31-10, 61-32-02, 61-32-03, 61-32-04, 61-32-05, 61-32-06, 61-32-09, and subsection 1 of section 61-33-09 of the North Dakota Century Code, relating to the director of the game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-01-17.1. State to cooperate with the animal and plant health inspection service and other agencies in destruction of predatory animals, destructive birds, and injurious field rodents. The commissioner of agriculture may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of: coyotes, wolves, bobcats, and foxes ~~in this state~~ that are injurious to livestock, poultry, and big and small game; injurious field rodents in rural areas; and certain nongame species of birds causing crop damage or substantial economic loss. This control and destruction must be approved by the director of the game and fish commissioner department. The commissioner of agriculture may enter into

written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish ~~commissioner~~ department covering the methods and procedures for the control and destruction of these birds and animals, the extent of supervision by either or both the commissioner of agriculture and the animal and plant health inspection service or other appropriate federal agency, and the use and expenditure of the funds appropriated therefor by the legislative assembly. The commissioner of agriculture, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter into agreements with other governmental agencies and with counties, associations, corporations, or individuals when ~~such~~ cooperation is deemed to be necessary to promote the control and destruction of these birds and animals.

\* SECTION 2. AMENDMENT. Subsection 3 of section 10-06-04.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Before any farmland or ranchland ~~can~~ may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and recreation department, the state engineer, the agriculture commissioner, the state forester, the director of the game and fish ~~commissioner~~ department, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

\*\* SECTION 3. AMENDMENT. Section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-02. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified.
2. "Associated equipment" means:
  - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
  - b. Any accessory or equipment for, or appurtenance to, a boat; and
  - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but

\* NOTE: Subsection 3 of section 10-06-04.3 was also amended by section 2 of Senate Bill No. 2054, chapter 640.

\*\* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2038, chapter 230; and by section 1 of Senate Bill No. 2043, chapter 233.

- d. Excluding radio equipment.
3. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
4. "Boat" means any vessel:
- Manufactured or used primarily for noncommercial use;
  - Leased, rented, or chartered to another for the latter's noncommercial use; or
  - Engaged in the carrying of six or fewer passengers.
5. ~~"Commissioner" means the state game and fish commissioner.~~
- 6- ~~"Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.~~
- 7- 6. "Department" means the ~~state~~ game and fish department.
- 8- 7. "Deputy ~~commissioner~~ director " means the deputy ~~state game and fish commissioner~~ director of the department.
8. "Director" means the director of the department.
9. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
- The destruction, drastic modification, or severe curtailment of its habitat.
  - Its overutilization for scientific, commercial, or sporting purposes.
  - The effect on it of disease, pollution, or predation.
  - Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
  - Any combination of the foregoing factors.
- The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.
10. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
11. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes.

12. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
13. "Guide" or "outfitter" means any resident who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents are not entitled to act as guides or outfitters in this state.
14. "Gun dogs" includes any dog used to hunt protected wildlife.
15. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
16. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
17. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
18. "Manufacturer" means any person engaged in:
  - a. The manufacture, construction, or assembly of boats or associated equipment.
  - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
  - c. The importation into the state for sale of boats, associated equipment, or components thereof.
19. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
20. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
21. "Operate" means to navigate or otherwise use a motorboat or a vessel.
22. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person

- entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
23. "Passenger" means every person carried on board a vessel other than:
    - a. The owner or his representative.
    - b. The operator.
    - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.
    - d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
  24. "Person" includes every partnership, association, and corporation. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
  25. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
  26. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the ~~commissioner's~~ director's approval, the ~~commissioner~~ director may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.
  27. "Public waters" means waters to which the general public has a right to access.
  28. "Resident" means any person who has actually lived within this state or maintained that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.
  29. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
  30. "Retrieve" means to have taken possession and made ready for transportation.
  31. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.

32. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
33. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
34. "Small game" includes all game birds and tree squirrels.
35. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
36. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
37. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
38. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
39. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
40. "Waters" when not qualified means waters not open to the general public.
41. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.
42. "Wildlife" means any member of the animal kingdom including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

\* SECTION 4. AMENDMENT. Section 20.1-01-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-03. Ownership and control of game and fish is in the state - Damages - Schedule of monetary values. The ownership of and title to all wild birds, fish, and wild animals within this state ~~shall be~~ is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation thereof, and for maintaining action for damages as herein provided. Any person catching, killing, taking, trapping, or possessing any wild birds, fish, or wild animals protected by law at any time or in any manner ~~shall be~~ is deemed to have consented that the title thereto ~~shall remain~~ remains in this state for the purpose of regulating the taking, use, possession, and disposition thereof. The state, through the office of

\* NOTE: Section 20.1-01-03 was also amended by section 2 of Senate Bill No. 2036, chapter 232.

attorney general, may institute and maintain any action for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of wild birds, fish, or wild animals, except as may be authorized by law. The state has a property interest in all protected wild birds, fish, and wild animals. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The commissioner director shall promulgate adopt by rule a schedule of monetary values of various species of fish and wildlife, said the values to represent the replacement costs of said the fish and wildlife and the value lost to the state due to the destruction or injury of said that species, together with other material elements of value. In any action brought under this section, the schedule shall constitute constitutes the measure of recovery for the fish and wildlife killed or destroyed. The funds ~~so~~ recovered shall must be deposited in the general fund, and devoted to the propagation and protection of desirable species of fish and wildlife.

SECTION 5. AMENDMENT. Section 20.1-01-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-04. Attorney general, state's attorneys, sheriffs, and peace officers to enforce game and fish laws. The attorney general, and all state's attorneys, sheriffs, and other peace officers shall enforce this title. The attorney general and the state's attorney of the county in which an action is to be brought or is pending shall appear for the commissioner director in all civil actions in which the commissioner director or any of the game wardens may be interested officially, and shall appear in the prosecution of criminal actions arising under this title.

\* SECTION 6. AMENDMENT. Section 20.1-01-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-26. Suspension of hunting, trapping, or fishing privileges - Surrender and return of license. In addition to the penalty provided upon conviction under this title, the court may suspend the defendant's hunting, trapping, or fishing privileges for up to two years. The court may not suspend the defendant's privileges for a noncriminal violation if the defendant has not been convicted for a violation of this title in the last three years. Upon conviction for a violation of section 20.1-01-18, the court shall suspend the defendant's hunting, fishing, and trapping privileges for a period of at least six months. At the time of the suspension, the court shall determine whether the defendant must successfully complete the hunter education course provided for in section 20.1-03-01.1, as prescribed by the proper state or provincial natural resources or wildlife management agency, before the defendant may purchase a new or obtain the return of a valid hunting license.

Upon imposition of such suspension, the court shall take any hunting, trapping, or fishing license or permit held by the defendant and forward it, together with a certified copy of the suspension order, to the commissioner director. Except as otherwise provided in this section, upon expiration of the suspension, the commissioner director shall return the person's license or permit if it is still valid. No person may purchase, or attempt to purchase, a hunting, trapping, or fishing license or permit during a suspension period. If the court so ordered, no person who has had a hunting license suspended may purchase or attempt to purchase a hunting license nor may the commissioner director return a valid hunting license until the person has successfully completed the course provided for in section 20.1-03-01.1

\* NOTE: Section 20.1-01-26 was also amended by section 3 of House Bill No. 1034, chapter 127.



and as prescribed by the proper state or provincial natural resources or wildlife management agency. A certificate of completion for a similar course issued by any other state or province of Canada is sufficient to meet this requirement. The person shall file proof of that completion with the court.

For the purpose of this section, the term "conviction" includes an admission or adjudication of a noncriminal violation.

SECTION 7. AMENDMENT. Section 20.1-01-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-28. Certain game and fish violations noncriminal - Procedures. Any person who has been cited for a violation that is designated as a noncriminal offense in this title or in related rules or proclamations may appear before a court of competent jurisdiction and pay the statutory fee at or prior to the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. A person appearing at the time scheduled in the citation may make a statement in explanation of that person's action and the judge may at that time waive, reduce, or suspend the statutory fee or bond, or both. If the person cited follows the foregoing procedures, that person has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the judge must be identical to the statutory fee established by section 20.1-01-30. Within ten days after forfeiture of bond or payment of the statutory fee, the judge shall certify to the ~~commissioner~~ director admission of the violation.

This section does not allow a halting officer to receive the statutory fee or bond.

SECTION 8. AMENDMENT. Subsection 3 of section 20.1-01-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. For violation of a rule approved by the ~~commissioner~~ director or of an order or proclamation issued by the governor, the amount set in the rule, order, or proclamation up to a maximum of two hundred fifty dollars.

SECTION 9. AMENDMENT. Section 20.1-02-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-01. ~~State Director of the game and fish commissioner department - Office to be maintained - Appointment - Term - Removal. A state~~  
~~The governor shall appoint the director of the game and fish commissioner~~  
~~must be appointed by the governor department. He shall hold~~ The director holds office for a term of four years beginning on the first day of July after the governor's election and until ~~his~~ a successor is appointed and qualified. ~~He~~ The director is subject to removal by the governor for cause only.

SECTION 10. AMENDMENT. Section 20.1-02-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-02. Bond and oath of ~~commissioner~~ director - Where filed. Before entering upon ~~his~~ that person's duties and within ten days after the date of ~~his~~ appointment, the ~~commissioner~~ director shall take and file the

oath prescribed for civil officers and ~~shall~~ must be bonded in the penal sum of ten thousand dollars.

SECTION 11. AMENDMENT. Section 20.1-02-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-03. Compensation and expenses of ~~commissioner~~ director - Audit and payment. The salary of the ~~commissioner~~ shall director ~~must~~ be within the amount appropriated for salaries by the legislative assembly. The ~~commissioner~~ shall director ~~must~~ be reimbursed for the necessary expenses incurred by ~~him~~ the director in the performance of ~~his~~ the director's duties. The ~~commissioner's~~ director's salary and expenses ~~shall~~ must be paid out of the game and fish fund and ~~shall~~ must be audited and paid in the same manner as the salary and expenses of other state officers.

\* SECTION 12. AMENDMENT. Section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-04. Duties of ~~commissioner~~ director. The ~~commissioner~~ director shall:

1. Maintain an office in Bismarck.
2. ~~Establish such~~ Adopt rules and regulations as are necessary to the conduct of ~~his~~ the department.
3. Keep an accurate record of all the transactions and expenditures of ~~his~~ the department and submit to the governor and the ~~department of accounts and purchases~~ office of management and budget a biennial report as prescribed by section 54-06-04.
4. Enforce state laws involving game animals, game birds, fish, and harmless birds and animals.
5. Collect and distribute statistics and information germane to this title and publish ~~such~~ information and reports, including a monthly bulletin, for the education of the public in conservation matters.
6. Examine all waters of the state and, wherever suitable waters are found, arrange to plant, stock, or deposit available fish, spawn, or fry.
7. Cooperate with the United States ~~bureau of sport fisheries~~ fish and wildlife service, or any other appropriate federal agency, and make applications for fish, spawn, and fry, to apportion and deposit in waters of the state.
8. Cooperate with and assist clubs and individuals in stocking the waters of this state with fish.
9. Remove or take from any public waters containing a surplus of fish, any reasonable quantity of fish for stocking other public waters, for hatching or propagating purposes, or for exchange with other states and countries.
10. Control, construct, mark, designate, manage, and have charge of all state fish hatcheries, state game farms, game refuges, and game

\* NOTE: Subsection 4 of section 20.1-02-04 was also amended by section 4 of Senate Bill No. 2036, chapter 232.

reserves owned, leased, or controlled for the propagation and protection of game birds, game animals, and fish.

11. Supervise the breeding, propagation, capture, distribution, and preservation of ~~such~~ game birds, game animals, and fish as ~~he~~ the director deems advisable.
12. ~~Make all~~ Adopt rules ~~and regulations~~ necessary for carrying out ~~the provisions of~~ section 20.1-10-01 and ~~such these~~ rules ~~and regulations shall~~ have the force of law after one publication in the daily newspapers of this state.
13. Provide the necessary blank forms for making applications for licenses of all kinds and distribute them among those authorized to sell licenses.
14. Keep a record of all permits issued for the purpose of propagation and domestication of game birds or protected animals.

\* SECTION 13. AMENDMENT. Section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-05. Powers of ~~commissioner~~ director. The ~~commissioner~~ director may:

1. Fix the salaries and the necessary travel and other expenses of department personnel subject to law and legislative appropriations.
2. Employ any part-time personnel necessary to run ~~his~~ the director's office and remove ~~such the~~ employees at will. Salaries and necessary traveling and other expenses of ~~such these~~ appointees ~~shall must~~ be authorized, audited, and paid in the same manner as salaries and expenses of state officers.
3. Accept from any person, or gather, or purchase, fish, spawn, or fry, for distribution in state waters.
4. Take alive at any time, under ~~his~~ the director's personal supervision or under the personal supervision of any of ~~his the~~ director's bonded appointees, any birds or animals for propagation purposes or for exchange with other states and foreign countries for game birds and animals of other species.
5. Order additional protection for any fish with an open season when, after investigation, ~~he~~ the director finds danger of extinction, undue depletion in any waters, or to aid in the propagation and protection of immature fish, by prescribing how, how many, where, and when ~~such the~~ fish may be taken. ~~Such~~ The orders ~~shall~~ have the force of law.
6. Take or cause to be taken at any time from any state public waters any suckers, carp, or pickerel.
7. With the governor's approval, purchase, lease, or condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state.

\* NOTE: Section 20.1-02-05 was also amended by section 1 of House Bill No. 1552, chapter 234.

8. Lease up to ninety-nine years any department land, for the purpose of development and improvement, to any nonprofit corporation, upon consideration of specified improvements to be made by the corporation and other improvements the department and the corporation may agree upon. The lease ~~shall~~ must provide that all funds received by the corporation through lease of the property be expended upon the leased premises for development and improvements. The corporation ~~shall have~~ has the authority, subject to approval by the ~~commissioner~~ director, to sublease the premises for cabin sites and other recreational purposes. Upon termination of the lease, the leased property, together with all improvements, ~~shall revert~~ reverts to the department.
9. With the governor's approval, enter into agreements with the bureau of reclamation for the management of lands in the Heart Butte area acquired by the bureau for the construction of dams on lakes or streams. Revenues derived from the management of ~~such these~~ lands or received from any federal agency for expenditure upon ~~such these~~ lands ~~shall may~~ not be commingled with other game and fish funds, but ~~shall~~ must be deposited by the ~~commissioner~~ director in a separate account. These funds are hereby appropriated for expenditure for ~~such~~ purposes as may be agreed upon by the bureau of reclamation, the ~~federal~~ United States fish and wildlife service, the national park service, and the ~~commissioner~~ director. The authority herein granted is effective only until the lands are resold to the former landowners by the bureau of reclamation.
10. Secure specimens of game birds, animals, and fish for breeding purposes by purchase or otherwise and by exchange with the game commissions or state game wardens of other states or countries.
11. Issue, at ~~his~~ the director's discretion, special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife. The application ~~shall must~~ be accompanied by a physician's statement verifying the person's condition. ~~Permits~~ A permit issued under this subsection ~~shall allow~~ allows the permittee to drive, or to be driven, on to any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, ~~shall may~~ be a hunter, unless ~~such~~ the other person is also a permittee. Provided, however, that ~~such~~ the land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee ~~shall must~~ first obtain the consent of the owner or tenant to hunt on ~~such~~ the land in the manner provided in this title.
12. Issue to any person, who is a paraplegic or who has lost the use of one or both arms, a special permit to hunt game with a crossbow if ~~he~~ that person otherwise complies with and qualifies under the licensing and other provisions of this title.
13. Issue any resident license prescribed by this title to a person who has come to the state with a bona fide intention of becoming a resident, even though ~~he~~ that person has not been a resident of this state for the required time period immediately preceding the application for the license, or to any person who is a member of

the United States armed forces and who is within the state on duty or leave, or to any employee of the United States fish and wildlife service or the conservation department of any state or province of Canada in the state to advise or consult with the department. No license ~~shall~~ may be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection ~~shall~~ does not apply to lottery permits, except that the ~~commissioner~~ director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

14. ~~Promulgate~~ Adopt rules and regulations, and issue permits for the transporting or introducing of fish, fish eggs, small game, big game, or fur-bearers after determining that ~~such~~ the fish, fish eggs, birds, or animals have been properly inspected for disease, and that the transplanting or introduction will be in compliance with state laws, and rules, and regulations. No person ~~shall~~ may transplant or introduce any fish or fish eggs into any of the public waters of this state, or transplant or introduce any species of small game, big game, or fur-bearers into this state without obtaining a permit from the ~~commissioner~~ director.
15. Pursuant to section 4-01-17.1, cooperate with the commissioner of agriculture, the ~~federal~~ United States fish and wildlife service, and other agencies in the destruction of predatory animals, destructive birds, and injurious field rodents. The ~~commissioner~~ director is hereby authorized to ~~promulgate~~ adopt rules and regulations in accordance with organized and systematic plans of the department of the interior for the destruction of these birds and animals. The ~~commissioner~~ director may determine the necessity and issue permits and rules and regulations therefor for the operation and use of private aircraft to assist in the destruction of the above birds and animals and aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
16. Exercise authority to establish programs, and rules, and regulations and administer state and federal funds provided to the state for the preservation and management of resident species determined by the ~~commissioner~~ director to be threatened or endangered species of wildlife. The authority exercised ~~shall~~ must be in compliance with the Endangered Species Act of 1973, Public Law 93-205. Any person who violates rules and regulations established under this subsection ~~shall be~~ is guilty of a class B misdemeanor.
17. Subject to the provisions of chapter 28-32, ~~promulgate~~ adopt rules and regulations for the licensing of guides or outfitters, and may require ~~such~~ records and reports as ~~he~~ shall deem the ~~director~~ director determines necessary. The ~~commissioner~~ director may, after due hearing as provided in chapter 28-32, revoke or refuse to renew the

- license of any person who violates such the rules and regulations or fails to provide such the records and reports.
18. Provide for the funding of a private land habitat improvement program with moneys derived from the interest earned on the game and fish fund. The state treasurer shall place the interest money in a special fund called the "game and fish department private land habitat improvement fund".
  19. Carry out a private land habitat improvement program by:
    - a. Entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered beneficial to fish and wildlife.
    - b. Annual leasing and development of fish and wildlife habitat or sport fishing areas on private land.
    - c. Carrying out practices which will alleviate depredations caused by big game animals.
  20. Subject to prior approval of the attorney general, lease or exchange such lands under his the director's jurisdiction or control which are deemed necessary for the improved management of wildlife resources.
  21. Subject to prior approval of the attorney general, impose such any conditions or reservations to such the leases or exchanges as he may deem the director determines necessary.
  22. Adopt rules and issue permits for conducting fishing contests involving public waters of the state. The commissioner director by rule shall define the term "fishing contest" and shall set criteria for which a fishing contest permit is required. The commissioner director may deny permits. No person may conduct a fishing contest on public waters without first receiving a permit issued by the commissioner director.
  23. Issue duplicates of lost or destroyed game and fish licenses or permits. The procedure for reissuing the licenses or permits and fees to be charged shall must be prescribed by the commissioner director by rule.
  24. Establish noncriminal penalties for any rules adopted by the commissioner director. The maximum noncriminal penalty that may be set by the commissioner director is a fine of two hundred fifty dollars. Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title.
  25. Issue, as a means of encouraging and promoting economic development in this state, complimentary fishing licenses to nonresident visiting dignitaries. The circumstances and conditions of complimentary fishing licenses issued must be determined by the commissioner director. The number of complimentary licenses may

not exceed fifty licenses per year. The director shall determine the visiting dignitaries shall be determined by the commissioner to be of national or international stature before being they are eligible for complimentary licenses.

SECTION 14. AMENDMENT. Section 20.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-06. Deputy commissioner director - Appointment, removal, oath, bond, reports. The commissioner director shall appoint, and may remove at pleasure, a deputy commissioner director who shall be is under his the director's direct control and supervision. The deputy, within ten days after the date of his that person's appointment, shall take and file the oath prescribed for civil officers and furnish a bond in the penal sum of five thousand dollars. Such The bond shall must conform to and shall must be filed in accordance with the provisions of law applicable to the bonds of state officers. The oath shall must be filed in the office of the secretary of state. The deputy commissioner director shall make monthly and annual reports to the commissioner director in the manner required by him the director.

SECTION 15. AMENDMENT. Section 20.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-07. Chief game warden, district deputy game wardens, biologists, and technicians - Appointment - Removal. The commissioner director, with the governor's approval, may appoint the following permanent employees:

1. A chief game warden who shall enforce all state game and fish laws and supervise all deputy game wardens.
2. District deputy game wardens, assigned by him the director, to enforce all state game and fish laws within specific appropriation limitations.
3. Biologists and technicians with specialized training and experience to perform duties specified by the commissioner director.

Such The appointees shall may be removed for cause only and in the manner specified by law.

SECTION 16. AMENDMENT. Section 20.1-02-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-09. Supervision of chief game warden by commissioner director - Records - Reports. The chief game warden shall be is under the direct control and supervision of the commissioner director and shall make monthly and annual reports to the commissioner director in a manner required by him the director. The chief game warden shall keep a complete and correct record, in a book provided for that purpose, of all his that person's transactions and of the name of each person violating the game and fish laws, the date of his that person's arrest, the amount of the fine and costs imposed upon and paid by each such person, and the name of the judge before whom he that person appeared. Such The record book, when requested, shall must be open to inspection by the public. The chief game warden shall make a

full report to the ~~commissioner~~ director within thirty days after the end of each fiscal year.

SECTION 17. AMENDMENT. Section 20.1-02-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-10. Special deputy game wardens - Appointment, removal, compensation. The ~~commissioner~~ director may appoint and remove at pleasure, one or more special deputy game wardens in each county. They ~~shall~~ serve for such the time and in such manner as the commissioner may direct director directs. They ~~shall~~ serve without compensation, but shall be are entitled to a reward pursuant to section 20.1-02-16.

SECTION 18. AMENDMENT. Section 20.1-02-11 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-11. Deputy game wardens supervised by ~~commissioner~~ director - To make reports. Each district deputy game warden and each special deputy game warden ~~shall be~~ are under the direct control and supervision of the ~~commissioner~~ director, and shall make monthly and annual reports to the ~~commissioner~~ director in a manner required by ~~him~~ the director.

SECTION 19. AMENDMENT. Section 20.1-02-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-14. Writs served and executed by game wardens - Peace officers and others to aid wardens, when. The ~~commissioner~~ director, deputy ~~commissioner~~ director, and all wardens and deputy wardens may serve and execute, in the same manner as any sheriff, all warrants and legal process issued by a court in enforcing this title. The officers of the department may call to their aid any sheriff, deputy sheriff, police officer, or other person to enforce this title. All peace officers or other persons, when called upon, shall enforce and aid in enforcing this title.

SECTION 20. AMENDMENT. Section 20.1-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-14.1. Uniform complaint and summons - Promise to appear. There is hereby established a uniform complaint and summons ~~which~~ that may be used in cases involving violations of this title. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedure relating to arrests without warrants ~~shall~~ do not apply, and the magistrates or state's attorneys ~~shall~~ are not be required to make another complaint of the offense charged in the uniform complaint and summons. The uniform complaint and summons ~~shall~~ must be of a form prescribed by the ~~game and fish commissioner~~ director and approved by the attorney general.

The time of court appearance to be specified in the summons ~~shall~~ must be at least five days after the issuance of ~~such the~~ such the summons unless the defendant ~~shall demand~~ demands an earlier hearing.

Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, ~~he~~ shall the defendant must be released from custody. After signing a promise to appear, ~~defendant~~ shall the defendant must be given a copy of the uniform complaint and summons. Any person refusing to give ~~such a~~ such a written promise to appear may be arrested if



proper cause exists, or proceeded against by complaint and warrant of arrest as provided in the North Dakota Rules of Criminal Procedure. Defendant's failure to appear at the time and place designated after signing a promise to appear ~~shall be~~ is a class B misdemeanor.

The uniform summons and complaint ~~shall~~ may not be used if the officer, acting within ~~his~~ the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a magistrate. The halting officer shall forthwith take any person not released upon ~~his~~ that person's promise to appear before the nearest or most accessible magistrate.

\* SECTION 21. AMENDMENT. Section 20.1-02-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-15. Police powers of ~~commissioner~~ director, deputy ~~commissioner~~ director, and bonded appointees of ~~commissioner~~ director. The ~~commissioner~~ director, deputy ~~commissioner~~ director, and any bonded appointees of the ~~commissioner~~ shall director have the power:

1. Of a peace officer for the purpose of enforcing this title and any other state laws, or rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.
2. To make arrests upon view and without warrant for any violation, committed in ~~his~~ that person's presence, of this title and any other state laws, or rules, or regulations relating to big game, small game, fur-bearers, fish, and other wildlife.
3. To regulate dealers in green furs, propagation or possession of live protected wildlife, taxidermists, shooting preserves, guides and outfitters, commercial fishing operations, private fish hatcheries and commercial bait vendors. In the regulation of these licensed activities, the premises used to conduct the business and records required by law ~~shall~~ must be open for inspection at reasonable hours by game and fish law enforcement officers.

SECTION 22. AMENDMENT. Section 20.1-02-15.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-15.1. Additional powers of ~~commissioner~~ director, deputy ~~commissioner~~ director, chief game wardens or district game wardens. The ~~commissioner~~ director, deputy ~~commissioner~~ director, chief game wardens or district game wardens ~~shall~~ have the power of a peace officer in the following circumstances:

1. To enforce state laws, and rules, and regulations on any game refuge, game management area or other land or water owned, leased or managed by the department.
2. When responding to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, such a request from a law enforcement agency or officer ~~shall mean~~ means only a request for assistance as to a particular and singular violation or suspicion of violation of law, and ~~shall~~ does not constitute a continuous request for assistance outside the purview of enforcement of the provisions of this title.

\* NOTE: Section 20.1-02-15 was also amended by section 5 of Senate Bill No. 2036, chapter 232.

3. The powers and duties ~~hereby~~ conferred ~~shall be~~ are supplemental to other powers and duties conferred upon the ~~commissioner~~ director, deputy ~~commissioner~~ director, chief game wardens or district game wardens and ~~shall~~ do not constitute an obligation beyond the regular course of duty of those officers.

This section ~~shall~~ may not be construed to limit the powers or duties of any peace officer within this state.

SECTION 23. AMENDMENT. Section 20.1-02-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16. ~~Commissioner~~ Director may pay rewards in connection with the conviction of violators - Amounts - Exceptions. The ~~commissioner~~ director, out of legislative reward appropriation, may pay complainants, upon the arrest and conviction of any person violating this title, a reward not to exceed:

1. One hundred dollars if the offense involves a violation relating to big game.
2. Fifty dollars if the offense involves a violation relating to game birds, fish, fur-bearers, or protected animals not mentioned in subsection 1.

This section ~~shall~~ does not apply when the complaint is made or required information is furnished by an officer, employee, or game warden who is regularly employed and who receives a salary from the department, or by a sheriff or other peace officer who receives a regular salary.

SECTION 24. AMENDMENT. Section 20.1-02-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.1. Use of game and fish fund. All income of the state game and fish department, deposited by the ~~commissioner~~ director with the state treasurer ~~shall~~ must be credited to the state game and fish fund and ~~said~~ the fund ~~shall~~ may be used only by the department. All money derived from the investment of ~~said~~ the fund or portions thereof ~~shall~~ must be credited to ~~said~~ the fund.

SECTION 25. AMENDMENT. Section 20.1-02-16.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.2. Nongame wildlife fund established - Uses - Appropriation. There is hereby established in the state treasury a special fund known as the nongame wildlife fund. The fund may be expended subject to appropriation by the legislative assembly to the game and fish department and must be used only for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state. The game and fish department shall allocate a portion of the fund to other state agencies for the purpose stated in this section, and with approval of the ~~game and fish commissioner~~ director. For the purpose of this section, "nongame wildlife" means all species of native animals not commonly taken for sport or commercial purposes and does not include animals determined by the game and fish department to be harmful animals. "Natural areas" and "nature preserves" mean areas as defined in section 55-11-02.

SECTION 26. AMENDMENT. Section 20.1-02-16.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.3. Small and big game habitat restoration trust fund - Advisory committee - Transfer - Continuing appropriation. The small and big game habitat restoration trust fund is established to further farmer-sportsmen relations and to enhance small and big game habitat by providing funds for the leasing of private land to establish or preserve small and big game habitat, food plot development, and to carry out a private land habitat improvement program by entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered especially beneficial to small and big game. No more than forty acres [64.76 hectares] per owner or operator may be leased under this program. No land may be purchased with small and big game habitat restoration trust fund moneys, and no funds may be used for administrative purposes. The private land habitat improvement program advisory committee shall advise the ~~commissioner~~ director concerning expenditures from the small and big game habitat restoration trust fund. The ~~commissioner~~ director shall provide staff services to the advisory committee. All members of the advisory committee must be residents of this state and must serve without remuneration. The amount of one hundred thousand dollars must be transferred annually from the game and fish operating fund to the small and big game habitat restoration trust fund. The interest earned by moneys contained in the small and big game habitat restoration trust fund is hereby appropriated as a standing and continuing appropriation for the purposes of this section.

SECTION 27. AMENDMENT. Section 20.1-02-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-17. Conditional assent to federal aid projects - Proceeds from license fees and application to be used for administration of department. North Dakota assents to the Act of Congress entitled "An Act to provide that the United States shall aid the states in wildlife restoration projects and for other purposes" [Pub. L. 75-415; 50 Stat. 917; 16 U.S.C. 669 et seq.], and the Act of Congress entitled "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes" [Pub. L. 81-681; 64 Stat. 430; 16 U.S.C. 777 et seq.] subject to the conditions of section 20.1-02-17.1. The ~~commissioner~~ director may conduct and establish cooperative wildlife and fish restoration projects as defined in these Acts, in compliance with the Acts and with rules ~~and regulations promulgated~~ adopted by the federal agency administering these Acts.

Hunting and fishing license fees and application fees assessed under section 20.1-03-12.2 ~~shall~~ may only be used for departmental programs and administration.

SECTION 28. AMENDMENT. Subsection 1 of section 20.1-02-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~state game and fish commissioner~~ director shall submit proposed wildlife and fish restoration programs or projects and updated segments thereof involving proposed acquisitions by purchase, lease, easement, or servitude of wetlands, water, or land areas by certified mail with return receipt to the board of county commissioners of the county or counties in which the affected areas

are located for the board's approval prior to agreement with and approval by the secretary of the interior.

**SECTION 29. AMENDMENT.** Section 20.1-02-18.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-18.1.** Federal wildlife area acquisitions - Submission to county commissioners, opportunity for public comment, and impact analysis required. The governor, the ~~game and fish commissioner~~ director, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the office of intergovernmental assistance which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the office of intergovernmental assistance. Upon expiration of the thirty-day period, all comments received by the office of intergovernmental assistance must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of ~~such~~ the comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

**SECTION 30. AMENDMENT.** Section 20.1-02-18.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**20.1-02-18.4.** Wetlands mediation advisory board. The wetlands mediation advisory board consists of the governor, or the governor's duly authorized designee, as chairman; the commissioner of agriculture, or the commissioner's duly authorized designee; the president, or a member selected

by the president, of the North Dakota farmers union; the president, or a member selected by the president, of the North Dakota farm bureau; the president, or a member selected by the president, of the North Dakota national farmers organization; the state engineer of the water commission, or the state engineer's duly authorized designee; the ~~state game and fish commissioner~~ director, or the ~~commissioner's~~ director's duly authorized designee; the regional director of the United States fish and wildlife service, or the regional director's duly authorized designee; the executive director, or a member selected by the executive director, of the state association of counties; and the executive vice president, or a member selected by the executive vice president, of the state association of soil conservation districts.

\* SECTION 31. AMENDMENT. Section 20.1-02-19 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-19. Removal proceedings - Game and fish hearing board. The removal of all game and fish employees other than the deputy ~~commissioner~~ director, and temporary, part-time, or probation appointees may be instituted only by the filing of a verified written charge with the governor. If the governor believes ~~such~~ the charges constitute grounds for removal, ~~he~~ the governor shall order a hearing thereon, on fifteen days' notice to the individual accused, before a hearing board consisting of the governor as chairman, the secretary of state, and the attorney general. If the governor believes that ~~such~~ the charge or charges do not constitute grounds for removal, ~~he~~ the governor shall dismiss the charges forthwith.

\*\* SECTION 32. AMENDMENT. Section 20.1-02-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-25. Meetings and duties. Each board member shall hold a public meeting at least twice each fiscal year in ~~his~~ the board member's respective district to make their presentations and to determine the needs and the opinions of those interested in such activities. The board shall meet at least twice each fiscal year. The board has the authority to advise the ~~commissioner~~ director regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations concerning the operation of the department and its programs which the ~~commissioner~~ director may carry out. The board shall forward copies of its recommendations to the governor. This section does not limit or restrict the powers, duties, and authority of the governor in the issuance of orders and proclamations as provided in chapter 20.1-08.

SECTION 33. AMENDMENT. Section 20.1-03-01.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-01.1. ~~Commissioner~~ Director to appoint and train instructors - Prescribe course material and classroom sites - Certify completion. The ~~commissioner~~ director shall provide classroom instruction on, and shall select, train, and certify persons or department personnel qualified to provide instruction on, firearms and bow safety and hunter responsibility, and shall prescribe the course material to be used, classroom locations, and the dates for teaching the course in this state. The ~~commissioner~~ director shall authorize the issuance of a certificate of completion to all persons satisfactorily completing the course.

\* NOTE: Section 20.1-02-19 was repealed by section 1 of House Bill No. 1267, chapter 236.

\*\* NOTE: Section 20.1-02-25 was also amended by section 3 of House Bill No. 1258, chapter 237.

SECTION 34. AMENDMENT. Section 20.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-02. General game license - Stamps allowed for specific licenses. No person ~~shall~~ may:

1. Acquire any resident or nonresident license to hunt, catch, take, or kill any small game or big game animal unless ~~he~~ that person first obtains an annual general game license.
2. Hunt, catch, take, trap, or kill any small game or big game animal unless ~~he~~ that person has in ~~his~~ that person's possession an annual general game license together with the specific license required.

The ~~commissioner~~ director shall design and furnish, for sale to residents and nonresidents, an annual general game license. A stamp may be prepared by the ~~commissioner~~ director to be affixed to a general game license in place of each separate small game or big game hunting license.

SECTION 35. AMENDMENT. Subsection 5 of section 20.1-03-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Be issued in the name of the ~~commissioner~~ director.

SECTION 36. AMENDMENT. Subsections 5 and 6 of section 20.1-03-10 of the North Dakota Century Code are amended and reenacted as follows:

5. Have connected to it ~~such~~ detachable shipping tags as the ~~commissioner~~ director may deem advisable.
6. Be issued in the name of the ~~commissioner~~ director.

SECTION 37. AMENDMENT. Section 20.1-03-12.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - No land purchases allowed. A habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of three dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged pursuant to section 20.1-03-12. No land may be purchased with habitat restoration stamp moneys. All moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration stamp program funds, and any and all other moneys resulting from the habitat restoration stamp program must be placed in the habitat restoration stamp fund and are intended to provide a fund to lease privately owned lands for wildlife habitat. Not more than ten percent of this fund may be used for administrative purposes. All other moneys generated by the habitat restoration stamp program must be used for lease payments. Any moneys generated by the habitat restoration stamp program and not expended during a biennium must be expended for the same purposes during the next biennium. Any land needed for reestablishing the wildlife population and habitat may be leased for periods up to six years, but no more than forty acres [16.18 hectares] in any section [259.00 hectares] of land may be leased for ~~such~~ these purposes. Hunting may not be prohibited on ~~such~~ these lands. In those judicial districts encompassing the historically prime pheasant range, as

determined by the ~~state game and fish commissioner~~ director, fifty percent of the expenditures within that judicial district must be for pheasant restoration and enhancement.

SECTION 38. AMENDMENT. Section 20.1-03-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-15. Taxidermist's license - Who to issue. ~~An~~ The director shall issue an annual license to practice taxidermy shall be issued by the commissioner upon payment of the appropriate license fee.

SECTION 39. AMENDMENT. Section 20.1-03-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-16. Records required of licensed taxidermists - Contents - Inspection of records and unmounted specimens by game officials - Penalty. Each person having a license to practice taxidermy shall keep a record showing the name of every person who furnished ~~him~~ the licensee with a green or unmounted specimen, and the species of each ~~such~~ specimen. The licensee, upon request, shall exhibit the record and all unmounted specimens in ~~his~~ the licensee's possession to the ~~commissioner~~ director, the deputy ~~commissioner~~ director, or any bonded game warden. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 40. AMENDMENT. Section 20.1-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds. All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by county auditors, the ~~commissioner~~ director, deputy ~~commissioner~~ director, and bonded game wardens. The deputy ~~commissioner~~ director and each bonded game warden shall send the ~~commissioner~~ director all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. The county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent. The remainder of the license fees must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of

each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the commissioner director. The commissioner director shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

SECTION 41. AMENDMENT. Section 20.1-03-18 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-18. County auditors to file applications and stubs - Game officials may inspect file - Return of unused supplies. Each county auditor shall keep on file all license applications ~~he~~ the auditor receives and all the stubs of licenses ~~he~~ the auditor issues. These applications and stubs may be inspected at any time by the commissioner director or his the director's duly authorized deputies and wardens. Within thirty days after the close of each open season, the auditor shall transmit to the commissioner director all applications, stubs, and unused or mutilated licenses covering that open season.

SECTION 42. AMENDMENT. Section 20.1-03-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-19. When reports and remittances to be made by county auditors to the commissioner director. Each county auditor, on the first day of February and August of each year, and within thirty days after the close of each open season, shall make a complete report of all license sales to the commissioner director on forms furnished by the commissioner director, accompanied by a warrant drawn on the county treasurer to cover such report.

SECTION 43. AMENDMENT. Section 20.1-03-21 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-21. Failure to turn over money collected under provisions of this title unlawful - Penalty. It ~~shall be~~ is unlawful for a person to fail or refuse to turn over any moneys collected or authorized to be collected under this title, or to fail or refuse to turn over and deliver to the commissioner director all applications, stubs, and mutilated and unused licenses and permits. The commissioner director may take appropriate action to recover from the person so defaulting, or on his that person's bond.

SECTION 44. AMENDMENT. Section 20.1-03-22 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-22. Buying or shipping green furs - License required - Expiration of license. No person ~~shall may~~ engage in the business of buying or shipping green furs in this state unless ~~he~~ that person first obtains a license from the commissioner director. A license issued under this section ~~shall expire expires~~ on the first day of September following the date of its issue, and ~~shall may~~ be issued only upon payment of the appropriate fee.

SECTION 45. AMENDMENT. Section 20.1-03-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-23. Records to be kept by licensed dealers in green furs - Report to commissioner director - Penalty. Each person licensed to engage in the business of buying or shipping green furs shall keep a true and correct



record of each purchase of ~~such green~~ furs made by that person. The record must show:

1. The date of the purchase.
2. The name and address of the seller.
3. The kind and number of furs involved in the purchase.
4. The amount of money paid to the seller for the furs purchased.
5. Any additional information as the ~~commissioner~~ director may require.

The information contained in the record must be furnished to the ~~commissioner~~ director on forms prepared by the ~~commissioner~~ director and under ~~such~~ rules as the ~~commissioner~~ director may adopt. Any person who violates this section is guilty of a class 1 noncriminal offense.

SECTION 46. AMENDMENT. Subsection 3 of section 20.1-03-25 of the North Dakota Century Code is amended and reenacted as follows:

3. Ship upland game or migratory waterfowl by common carrier, upon identifying ~~himself that person~~ by displaying ~~his that person's~~ nonresident license, if the shipment is carried openly for content inspection and is plainly marked with tags issued by the ~~commissioner~~ director. These tags must be designed so they can be used only once.

SECTION 47. AMENDMENT. Section 20.1-03-27 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-27. Licenses to be carried on person - Licenses to be shown officers upon demand - Penalty. Any person holding a hunting, trapping, or fishing license required under this title shall carry the license on ~~his that person's~~ person when hunting, trapping, or fishing. Upon the request or demand of the ~~commissioner~~ director, the deputy ~~commissioner~~ director, any game warden, or any police officer, that person shall show the license immediately to the officer making the request or demand. Any person who violates this section is guilty of a class 2 noncriminal offense.

\* SECTION 48. AMENDMENT. Section 20.1-03-30 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-30. Processing fee for application for antelope license when not eligible. The fee remitted by any person who applies for a special resident antelope license when by any law or proclamation ~~he that person~~ is ineligible to apply because of any waiting period, ~~shall be is~~ forfeited. The ~~commissioner~~ director shall notify the applicant ~~he that the applicant~~ is ineligible for ~~such~~ this reason. The fees received by the department pursuant to this section ~~shall~~ must be deposited in the state game and fish fund.

SECTION 49. AMENDMENT. Section 20.1-03-31 of the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Section 20.1-03-30 was also amended by section 1 of Senate Bill No. 2048, chapter 244.

20.1-03-31. Using or claiming as one's own the license or permit of another person unlawful. No person ~~shall~~ may use the license or permit of another person or attempt to deceive the commissioner director, the deputy commissioner director, any game warden, or any police officer, by claiming ~~such a~~ that license as ~~his~~ that person's own.

SECTION 50. AMENDMENT. Section 20.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-03. Harmless wild birds protected - Imported songbirds as domestic pets may be possessed and sold. No person, without a permit issued by the commissioner director, shall kill, catch, take, ship, cause to be shipped, purchase, offer, or expose for sale, sell, have in ~~his~~ that person's possession or under ~~his~~ that person's control, any harmless wild bird, or any part thereof, irrespective of whether ~~such~~ the harmless wild bird was captured or killed in or out of this state. Imported songbirds used and to be used as domestic pets may be bought, sold, shipped, or possessed at any time.

SECTION 51. AMENDMENT. Section 20.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-04. Nests and eggs of protected birds protected. No person, without a permit issued by the commissioner director, ~~shall~~ may take, have in ~~his~~ that person's possession or under ~~his~~ that person's control, or needlessly break up or destroy, or in any manner interfere with, the nest or the eggs of any kind of bird, the killing of which is prohibited.

SECTION 52. AMENDMENT. Section 20.1-05-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-05-07. When seals to be attached to carcasses of big game animals - Commissioner Director to furnish seals. Each person having a big game hunting license, immediately after killing a big game animal, shall affix to the animal's carcass a locking seal bearing ~~his~~ that person's big game hunting license number. The director shall furnish the locking seal ~~shall be furnished by the commissioner~~ with each big game hunting license issued, ~~and shall~~. The seal must be attached and sealed in a manner prescribed by the commissioner director.

SECTION 53. AMENDMENT. Section 20.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-04. Possession of seines, setlines, fishtraps. No person, except as provided in sections 20.1-06-05 and 20.1-06-06, ~~shall~~ may set, use, or have in ~~his~~ that person's possession, or transport other than by public carrier, any setnets, seines, setlines, or fishtraps. Violators ~~shall be~~ are deemed to be in possession of a public nuisance, and the commissioner director, any bonded game warden, or any peace officer shall, without warrant or process, seize the items and hold them subject to the order of a court of competent jurisdiction.

SECTION 54. AMENDMENT. Section 20.1-06-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-05. Removing undesirable fish. The commissioner director, any person authorized by the commissioner director, or anyone contracting with

the ~~commissioner~~ director, may kill or take fish from waters of this state in any manner prescribed by the ~~commissioner~~ director when in the ~~commissioner's~~ director's judgment it is in the best interest of public fishing. All such fish must be disposed of at the ~~commissioner's~~ director's discretion. Money derived from ~~such~~ the disposal must be deposited in the state treasury and credited to the game and fish fund. All money received and expended must be itemized, and written records thereof must be kept in the ~~commissioner's~~ director's office. Any person desiring to contract with the ~~commissioner~~ director to take such fish, as determined by the ~~commissioner~~ director, from the waters of this state, by means of not more than five hoop-nets or traps, not more than five setlines of ten hooks, or not more than one hundred feet [30.48 meters] of seine, must be awarded the contract upon payment of the appropriate fee. These contracts may not specify the disposition of the fish.

SECTION 55. AMENDMENT. Section 20.1-06-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-07. Fishhouses - License - Removal - Penalty.

1. No person, except as provided in section 20.1-06-05, ~~shall~~ may erect, have, or maintain on the ice in any waters of this state, a fishhouse used or to be used while ice fishing, or a dark house used or to be used for spearfishing, without first obtaining a separate license for each unit used. Licenses ~~shall~~ must be issued by the ~~commissioner~~ director, for the period of five winter fishing seasons, including the season commencing in the year of purchase. Fishhouse licenses are not transferable and fishhouses that are transferred must be relicensed for a five-year period by the new owner of the fishhouse. Licenses are subject to the rules the ~~commissioner~~ director may adopt governing the construction, maintenance, and use of ~~such~~ these units. The outside of each licensed unit ~~shall~~ must have inscribed on it, in readily distinguishable characters at least six inches [15.24 centimeters] high, the license number and the owner's name. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
2. Each unit ~~shall~~ must be removed from the ice by that date established by the governor's proclamation. Failure to remove a unit is deemed an abandonment and the ~~commissioner~~ director may remove or destroy abandoned units.

SECTION 56. AMENDMENT. Subsections 1 and 2 of section 20.1-06-10 of the North Dakota Century Code are amended and reenacted as follows:

1. Persons authorized by section 20.1-06-05 may sell fish as directed by the ~~commissioner~~ director.
2. Any person, firm, or corporation peddling fish may do so only after obtaining a license issued by the ~~commissioner~~ director upon payment of the required annual fee. ~~Such~~ The person, firm, or corporation shall keep a full and complete record of the source of ~~such~~ fish as prescribed by the ~~commissioner~~ director.

SECTION 57. AMENDMENT. Section 20.1-06-12 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-12. Regulations governing private fish hatcheries. Any person operating a private fish hatchery shall ~~is~~ not be subject to fishing seasons, limits, legal size restrictions, or other methods of taking fish as provided in any governor's proclamation. The commissioner ~~is hereby authorized to promulgate~~ director may adopt rules and regulations governing the operation of private fish hatcheries. No license ~~shall be~~ is required of any person for taking fish by angling at a licensed private fish hatchery operated in accordance with the rules and regulations of the commissioner ~~director~~. The hatchery operator shall furnish to each person taking such fish a written certificate in such the form as the commissioner ~~shall prescribe~~ director prescribes, giving the number and description of the fish taken and such other information as the commissioner ~~director~~ requires, whereupon such the fish may be possessed, shipped, or transported within the state in like manner as fish taken by residents under a license. The commissioner ~~director~~ shall issue an annual license to operate ~~said~~ the hatchery during a calendar year or a portion of a year upon application and payment of the appropriate fee by the owner or operator. Such ~~The~~ license may be suspended for noncompliance with the commissioner's ~~director's~~ regulations.

SECTION 58. AMENDMENT. Section 20.1-06-13 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-13. Property rights - Fish wild by nature. Any person, firm, or corporation raising and owning any lawfully possessed fish, wild by nature, ~~shall have~~ has the same property rights therein as enjoyed by owners of domestic fish. They ~~shall~~ are, however, ~~be~~ subject to all rules and regulations promulgated adopted by the commissioner ~~director~~ regarding the introduction and release into the state of such ~~the~~ fish, as provided in subsection 14 of section 20.1-02-05.

SECTION 59. AMENDMENT. Section 20.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-14. Minnow bait wholesalers and retailers - License. The commissioner ~~director~~ shall adopt rules and regulations to control and supervise the operations of minnow or other live bait wholesalers. The commissioner ~~director~~ shall issue a license to each such wholesaler when ~~he~~ the wholesaler has complied with the commissioner's ~~director's~~ rules and regulations and has paid the appropriate annual license fee. The commissioner ~~director~~ shall also issue a minnow or other live bait retailer's license to any person upon payment of the appropriate license fee. No person ~~shall~~ may sell minnows or other live bait at wholesale or retail without first obtaining the appropriate license. The commissioner ~~director~~ may require each retailer or wholesaler to submit such reports as the commissioner ~~director~~ may deem necessary.

SECTION 60. AMENDMENT. Section 20.1-06-15 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-15. Fishways at dams. Any person owning, erecting, managing, or controlling any dam or other obstruction across any river, creek or stream within or forming the boundary of this state, at the commissioner's ~~director's~~ direction, shall construct and keep in good repair, a durable and efficient fishway in the manner, shape, and size as the commissioner ~~director~~ may direct. Upon failure to construct or maintain such the fishway, after giving such the person ten days' notice, the commissioner ~~director~~ may construct or repair the fishway and recover the costs from the person owning,

erecting, managing, or controlling the dam or obstruction. No person ~~shall~~ may construct any fishway without the approval of the ~~commissioner~~ director.

SECTION 61. AMENDMENT. Section 20.1-06-16 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-16. Turtles not to be taken without permit or contract from ~~game and fish commissioner~~ director. No person ~~shall~~ may engage in the commercial taking, trapping, or hooking of turtles without obtaining a permit from the ~~commissioner~~ director, who may issue ~~such~~ the permits at ~~his~~ the ~~director's~~ director's discretion. The ~~commissioner~~ director shall designate the form of ~~such~~ the permits, the areas or waters in which the permits are valid, and any other restrictions.

The ~~commissioner~~ director shall have authority to contract with any person to remove turtles from any waters or areas of this state. Moneys derived from the sale of turtle permits or turtle removal contracts ~~shall~~ must be credited to the game and fish fund in the same manner as income from sale of fishing licenses.

SECTION 62. AMENDMENT. Section 20.1-06-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-17. Frogs - Season for taking - Regulations. No person ~~shall~~ may engage in the taking of frogs for sale for human consumption or scientific purposes without obtaining a frog license from the ~~commissioner~~ director. No person ~~shall~~ may buy, job, take on consignment or ship frogs without obtaining the appropriate resident or nonresident commercial frog license. The ~~commissioner~~ director shall designate the form of ~~such~~ the licenses, the areas in which the license is valid, and any other restrictions. The ~~commissioner~~ director shall issue regulations relating to the manner of taking, shipping, buying, or selling and may require reports from each licensee at ~~such~~ the time and containing ~~such~~ such information as deemed necessary. Except as provided in subsection 3 of section 20.1-03-04.1, it is unlawful to take frogs on private land without written permission of the owner or operator of the land.

SECTION 63. AMENDMENT. Section 20.1-07-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-02. Property rights - Wild fur-bearing animals. Any person, firm, or corporation raising and owning any protected fur-bearing animal, or in possession of the pelt of any wild animal lawfully obtained, ~~shall have~~ has the same property rights therein as enjoyed by owners of domestic animals. They ~~shall are, however, be~~ are subject to all rules ~~and regulations~~ promulgated adopted by the ~~commissioner~~ director in regard to the introduction and release into the state of ~~such~~ the animals, as provided in subsection 14 of section 20.1-02-05.

SECTION 64. AMENDMENT. Subsection 4 of section 20.1-07-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The ~~commissioner~~ director shall establish and publish in pamphlet form safety standards for snares used for the taking of coyotes, which will prevent the accidental holding of deer and other

appropriate animals. These standards must be followed by any person using a snare pursuant to this section.

SECTION 65. AMENDMENT. Section 20.1-07-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-07-05. Manner of taking protected fur-bearing animals restricted - Destruction of property of others unlawful - Penalty. It is unlawful to molest or destroy the natural burrow, den, or retreat of any protected fur-bearer, or to damage or injure the property of another while taking or attempting to take ~~such~~ that fur-bearer. The governor, at the advice of the ~~commissioner~~ director, may by proclamation determine the manner in which fur-bearing animals may be taken in accordance with this section. Any person who violates this section is guilty of a class 2 noncriminal offense.

\* SECTION 66. AMENDMENT. Section 20.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-02. Governor may vary statutory open and closed season by order or proclamation. Whenever the governor, after investigation and recommendation by the ~~commissioner~~ director, finds:

1. That any species of big game, small game, fish, or fur-bearers for which an open season is provided, are in danger of depletion or extinction, or when necessary for proper protection during the propagating period, ~~he~~ the governor may, by order, provide protection for ~~such~~ the species additional to that provided by law.
2. That any species of big game, small game, or fish, have become sufficient in numbers to warrant an open season, or to be detrimental, or a nuisance to the farmers of the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.
3. That any species of fur-bearing animals have become sufficient in numbers to warrant an open season or have become a menace to other species of wildlife in the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.
4. That due to climatic conditions a hunting season may create a fire hazard, ~~he~~ the governor may, by order, close or postpone, and reopen, any hunting season in areas where ~~such~~ these conditions exist, upon reasonable notice through the media. The emergency closing or postponement and reopening can be accomplished without complying with section 20.1-08-05.

SECTION 67. AMENDMENT. Section 20.1-08-04.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading long guns. The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading long guns in ~~such~~ the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading long guns must be issued by the ~~commissioner~~ director by lottery as prescribed by the ~~commissioner~~ director, with a maximum of seven hundred licenses issued each

\* NOTE: Section 20.1-08-02 was also amended by section 8 of Senate Bill No. 2036, chapter 232.

season. As used in this section, the term "muzzleloading long gun" means any forty-five or larger caliber long gun loaded through the muzzle.

SECTION 68. AMENDMENT. Section 20.1-09-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-09-02. Permits to propagate, domesticate, or possess birds or animals. Permits to propagate, domesticate, or possess live protected birds or animals may be issued by the ~~commissioner~~ director to any North Dakota resident. These permits ~~shall~~ expire on December thirty-first of the year they are issued. One permit may cover several species of birds or animals, but a single permit ~~shall may~~ not cover both birds and animals. No person ~~shall may~~ possess any live protected animal or bird without first obtaining a permit from the ~~commissioner~~ director.

SECTION 69. AMENDMENT. Section 20.1-09-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-09-03. Contents of application for permit to propagate, domesticate, or possess live birds or animals. An application for a permit to propagate, domesticate, or possess live protected birds or animals ~~shall~~ must be made upon forms furnished by the ~~commissioner~~ director, ~~shall~~ must be signed by the applicant, and ~~shall~~ must state:

1. The name and address of the applicant.
2. A description of the premises where the applicant will keep the birds or animals.
3. The number and kind of birds or animals in the applicant's possession at the time of application, and whether they are wild or domesticated.
4. Such Any other information ~~as the commissioner may require~~ director requires.

SECTION 70. AMENDMENT. Section 20.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-09-04. Reports to ~~commissioner~~ director by persons holding propagation permits - Contents of reports. Every person holding a permit to propagate and domesticate protected birds or animals shall report to the ~~commissioner~~ director annually, on or before December thirty-first, any increase or decrease in the number of birds or animals held under ~~such~~ the permit during the year in which the report is made.

SECTION 71. AMENDMENT. Section 20.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-09-05. Sale, collection, and transportation of birds, animals, and eggs held for propagation - ~~Commissioner's~~ Director's consent necessary. Protected birds or animals held for propagation and domestication under a permit may be sold or transported live for propagation purposes. Their eggs may be collected, sold, or transported during seasons the ~~commissioner~~ shall ~~prescribe~~ director prescribes. All ~~such~~ collections, sales, and shipments ~~shall~~ must be with the ~~commissioner's~~ director's written permission. Protected birds or animals raised in North Dakota under a propagation permit

may be disposed of, with the ~~commissioner's~~ director's written permission, at times ~~he~~ the director may prescribe. The carcasses of these birds or animals may be disposed of as food when properly identified by a suitable tag or seal furnished by the ~~commissioner~~ director.

SECTION 72. AMENDMENT. Section 20.1-10-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-10-01. Property unlawfully taken, transported, or used to be confiscated by certain game and fish officials - Procedure. The ~~commissioner~~ director, deputy ~~commissioner~~ director, or any bonded game warden shall seize all wild birds, wild animals, or fish, or any part thereof, taken, killed, or possessed, or transported contrary to law, and shall seize all dogs, guns, seines, nets, boats, lights, automobiles, vehicles, instrumentalities, appliances, and devices unlawfully used, or held with intent to be unlawfully used, in pursuing, taking, or attempting to take, concealing, or disposing of wild birds, wild animals, or fish, or any part thereof. Property used or held with the intent to be used unlawfully in pursuing, taking, attempting to take, concealing, or disposing of wild birds, wild animals, or fish may not be confiscated when the violation is a noncriminal offense. All property seized ~~shall~~ must be held subject to the order of a court of competent jurisdiction. When property is confiscated, the confiscating officer shall bring the alleged offender before a court of competent jurisdiction for the purpose of determining disposition. However, if the court having nominal jurisdiction over the alleged wrongdoer determines that the value of the confiscated property exceeds the court's jurisdictional limitations, the matter may, upon the motion of either party, be removed to district court for determination. If the alleged offender desires an attorney, a reasonable time ~~shall~~ must be given to secure counsel. If it is not feasible to bring the alleged offender immediately before the court, the property ~~shall~~ may not be seized or confiscated if the alleged offender gives a receipt to the officer assuring delivery before the court when the matter comes up. The receipt ~~shall~~ must contain the provisions of this section to advise the alleged offender of the law.

SECTION 73. AMENDMENT. Section 20.1-10-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-10-04. Who to sell confiscated property - Bills of sale - Disposition of proceeds of sale. All confiscated property that a court has ordered to be disposed of by the ~~commissioner~~ director must be turned over to the North Dakota wildlife federation to be sold for the highest price obtainable. On any ~~such~~ sale of animals, birds, or fish, or parts thereof, the seller shall issue to each purchaser a bill of sale on forms prepared and furnished by the ~~commissioner~~ director. The sale proceeds, after the expenses of the seizure and the sale are deducted, must be remitted to the North Dakota wildlife federation report all poachers fund. The remittance must be accompanied by a complete and certified report of the sale supported by proper vouchers covering all deductions made for expenses. This report must be filed for record with the ~~commissioner~~ director.

SECTION 74. AMENDMENT. Section 20.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-02. Game refuges on privately owned or leased lands - How established. Any person owning, or having control by lease or otherwise, for the required time, of any lands within this state, may establish a state game



refuge thereon by filing with the commissioner director a written application containing:

1. The name of the owner or lessee of the lands described therein.
2. The written consent of the owner, or, if the application is made by a lessee, the written consent of both the owner and the lessee, to the establishment of a state game refuge thereon.
3. The time for which the refuge is to be established, which ~~shall~~ must be for five years or more from the date the application is filed with the commissioner director. The lease may be made renewable at the option of both parties and may be terminated at any time by mutual consent of both parties.
4. The extent and legal description of the lands involved. The lands must be ten acres [4.05 hectares] or more, but cannot exceed six sections [1,553.99 hectares] in any one township.
5. A brief dedication of ~~such the~~ lands to this state for the purpose of a state game refuge.
6. A waiver by the owner, or, if the application is made by a lessee, by both the owner and lessee, of all rights of ~~himself that person~~ and members of ~~his that person's~~ family to hunt, shoot, trap, or kill any game bird or protected animal on the land during the life of the dedication of the lands to this state as a state game refuge.

After ~~such the~~ application, in due form, has been filed with the commissioner director and has been accepted by ~~him the director~~, the lands described in the application ~~shall~~ constitute a state game refuge for the time set forth in the application.

SECTION 75. AMENDMENT. Section 20.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-04. Game refuges on public lands may be established by commissioner director - Duration of public land refuges. The commissioner director may establish state game refuges on any unsold public lands of this state. ~~Such~~ The refuge ~~shall continue~~ continues to exist until canceled by the commissioner director or until the land on which it is located is sold to a private person.

SECTION 76. AMENDMENT. Section 20.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-05. Establishment of state game or fish management areas. The commissioner director may establish game or fish management areas upon any state-owned lands for the use and benefit of the game and fish department, or upon any publicly or privately owned land leased or given by license to the game and fish department for hunting and fishing purposes. These game or fish management areas may be opened for hunting, fishing, or trapping under chapter 20.1-08. The commissioner director may ~~establish~~ adopt rules ~~and regulations~~ concerning the use of game or fish management areas pursuant to chapter 28-32.

SECTION 77. AMENDMENT. Section 20.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-06. Public record of state game refuges to be kept by ~~commissioner~~ director - Contents of record. The ~~commissioner~~ director shall keep a record of all state game refuges established on privately owned or leased lands or on public lands. This record ~~shall~~ must list each state game refuge by the county in which it is located and, with reference to each refuge established on privately owned or leased lands, ~~shall~~ must show:

1. The name of the person making the dedication.
2. The period for which it is dedicated.
3. The legal description of the land on which it is located.

~~Such~~ The record ~~shall be~~ is open to public inspection.

SECTION 78. AMENDMENT. Section 20.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-07. Game refuges, game management areas to be posted by ~~commissioner~~ director - Inscription on signs - Location. The ~~commissioner~~ director shall post each state game refuge and game management area with sign boards bearing the words "state game refuge" or "state game management area". These signs ~~shall~~ must be located at each corner of the refuge or management area, and along the outer lines at intervals of approximately four hundred forty yards [402.34 meters].

SECTION 79. AMENDMENT. Section 20.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-08. Hunting and trapping within refuge prohibited - Exception in case of carnivorous birds or animals. The owner or lessee of any lands or lake set aside as a state game refuge under this chapter ~~shall~~ may not hunt or carry firearms within the limits thereof, nor permit the members of ~~his~~ that person's family or other persons to do so. However, if ~~he~~ that person has reason to believe there are carnivorous birds or animals within the refuge, or if ~~he~~ that person finds any of the same thereon, ~~he~~ that person may, with the ~~commissioner's~~ director's written permission, hunt, trap, and kill any carnivorous or unprotected birds and animals ~~which~~ that prey upon protected game birds or animals found within the refuge.

SECTION 80. AMENDMENT. Section 20.1-11-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-09. When predatory animals on state game refuges may be destroyed by persons designated by ~~commissioner~~ director. The ~~commissioner~~ director, with the consent of the refuge owner or lessee, may designate any game warden or other person to destroy, subject to the regulations of the ~~commissioner~~ director, predatory birds or animals within any state game refuge.

SECTION 81. AMENDMENT. Section 20.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-10. ~~Commissioner~~ Director to mark game farms, refuges, management areas, breeding and resting places - Destroying or defacing signs unlawful. The ~~commissioner~~ director shall mark all game farms, state game refuges, game or fish management areas, breeding grounds, and resting places under ~~his~~ the director's protection. No person ~~shall~~ may mutilate, destroy, tear or pull down, or shoot at any ~~such~~ designating mark or other special or general warning sign or card.

SECTION 82. AMENDMENT. Section 20.1-12-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-02. Operating permit for shooting preserve. Any person who desires to establish a shooting preserve under this chapter may apply to the ~~commissioner~~ director for a shooting preserve operating permit. The application must be made by the applicant, the applicant's agent, or the applicant's attorney; must be in ~~such~~ the form as the ~~commissioner~~ may prescribe ~~director prescribes~~; and must be accompanied by the appropriate operating permit fee. Acreage [hectarage] amounts must include lands used for hatching, game production areas, or headquarters areas. Upon the receipt of the application, the ~~commissioner~~ director shall inspect the area described therein, including the facilities, and shall investigate the ability of the applicant to operate an area of this character, in accordance with section 20.1-12-03. The permit, if granted, must be issued for one year, and may be renewed annually by payment of the appropriate operating permit fee.

SECTION 83. AMENDMENT. Section 20.1-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-03. Prerequisites for the issuance of permits - Bonds. Before issuing any permit under this chapter, the ~~commissioner~~ director shall determine that:

1. The applicant is financially able to provide the necessary facilities and services to operate a shooting preserve.
2. The applicant proposes to comply with this chapter.
3. The operation of the preserve will not work a fraud upon persons permitted to hunt thereon.
4. The operation of the preserve is not designed to circumvent game laws or ~~regulations~~ rules.
5. The issuance of the permit will be in the public interest.

Before any permit is issued to the applicant, that person must file a two thousand dollar bond to the state, executed by a surety company authorized to do business in the state, and conditioned that the applicant will comply with this chapter and the rules adopted by the ~~commissioner~~ director thereunder, and will pay any fine and costs upon conviction of the permittee for violation of this chapter and all reasonable costs arising from any hearing for revocation or suspension of the permit. The bond requirement of this section does not apply to any person who is both the record title owner and operator of a private shooting preserve.

SECTION 84. AMENDMENT. Section 20.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-04. Types of game that may be hunted on shooting preserve - Identification of game. Game birds that may be stocked on a shooting preserve and hunted under this chapter shall must be artificially propagated pheasants, quail, partridges, turkeys, prairie chickens, and such any other species as allowed by the commissioner director. The commissioner director shall determine the minimum stock of each species to be hunted and released on the permit area during the shooting preserve season.

All game birds released on a shooting preserve shall must be marked prior to release as prescribed by the commissioner director by rule or regulation. All mallard ducks released on a shooting preserve shall must have the right hind toenails clipped before the birds attain the age of four weeks.

\* SECTION 85. AMENDMENT. Section 20.1-12-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-05. Operation of shooting preserve - Season - Search of premises permitted. Any guest of a shooting preserve operator, in possession of a general game license, may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of three hundred feet [91.44 meters] or less. Each shooting preserve operator and that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to section 20.1-01-10. The season for shooting preserves may be all or part of the seven-month period beginning September first and ending March thirty-first of the following year. All permits must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner director may enter and search the premises or any part thereof at any reasonable time to ensure compliance with state laws and the commissioner's director's rules and regulations.

SECTION 86. AMENDMENT. Section 20.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-06. Game birds to be tagged. Each shooting preserve operator shall tag all game birds harvested by guests before the birds are consumed or removed from the shooting preserve premises. The tags shall must distinguish between birds released by the shooting preserve operator, and wild birds. Tags shall must be numbered consecutively, dated by year of issuance, and shall must be self-sealing. The commissioner director shall provide tags to shooting preserve operators, at nominal cost to them. Once affixed, tags shall must remain attached until the game birds are prepared for consumption.

SECTION 87. AMENDMENT. Section 20.1-12-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-07. Guest register and records to be maintained. Each shooting preserve operator shall maintain a guest register listing the

\* NOTE: Section 20.1-12-05 was also amended by section 2 of Senate Bill No. 2040, chapter 250.

guest's name and address, the number of ~~his~~ that person's North Dakota general game license, the date on which the guest hunted, the number of game birds and species taken and their tag numbers, with wild birds and operator released birds listed separately. A record must also be maintained by each shooting preserve operator of the source of game released in the operator's preserve, the date of release, and the number and kind of game bird or species released. The records required by this section must be open for inspection by the commissioner director, the commissioner's director's representative, or any law enforcement officer at any reasonable time.

SECTION 88. AMENDMENT. Section 20.1-12-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-08. Rules and regulations to be promulgated adopted by the commissioner director. The commissioner director shall promulgate adopt rules and regulations reasonably necessary to implement this chapter.

SECTION 89. AMENDMENT. Section 20.1-12-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-12-09. Revocation of permit. The commissioner is hereby authorized director, after due notice to the shooting preserve operator and a hearing thereon, ~~to~~ may revoke or suspend the permit of any operator for any violation of this chapter or of the rules and regulations of the commissioner director.

SECTION 90. AMENDMENT. Section 20.1-13-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-13-04. Rules and regulations - Licensing watercraft for hire - Annual inspection - Penalty. The commissioner director, to promote the public safety, shall adopt rules to license watercraft used for hire, or furnished with cottages let for hire, and to prescribe the safety equipment, construction, and manner of operation of ~~such the~~ craft. The commissioner director shall provide for annual inspection of all watercraft used for hire to determine if rules governing ~~such the~~ watercraft have been complied with, and may issue licenses to operate ~~such the~~ watercraft. The commissioner director shall issue, along with each license, some evidence that the craft has been inspected and conforms to the standards governing ~~such the~~ craft. No person ~~shall~~ may operate watercraft used for hire or furnished with cottages let for hire without a current year's license. Any person who violates this section is guilty of a class 2 noncriminal offense.

\* SECTION 91. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the director of the game and fish commissioner department, the director of state parks and recreation, the director of the economic development commission, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the

\* NOTE: Section 24-02-37.1 was also amended by section 3 of Senate Bill No. 2054, chapter 640; by section 30 of Senate Bill No. 2058, chapter 95; and by section 4 of Senate Bill No. 2073, chapter 600.

commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 92. AMENDMENT. Section 37-07.3-04 of the North Dakota Century Code is amended and reenacted as follows:

37-07.3-04. Payments in lieu of real estate taxes. For land acquired under this chapter, the adjutant general shall make payments in lieu of real estate taxes to the counties in which the property is located in the same manner and according to the same conditions and procedures as provided in chapter 57-02.1 for payments in lieu of real estate taxes by the ~~state director of the game and fish commissioner department~~, except no county may receive less in payments under this section for any parcel or tract of land for any year than the county received in real estate taxes for the last year in which the land was taxable.

\* SECTION 93. AMENDMENT. Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. There ~~shall be~~ is a state historical society of North Dakota which ~~will be~~ is under the supervision and control of the state historical board. The board ~~shall consist~~ consists of nine members who ~~shall be~~ are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments ~~shall be~~ are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified except that the first appointments under this section ~~shall be~~ are staggered so that the term of three members ~~shall expire~~ expires each year. Vacancies occurring other than by the expiration of an appointive term ~~shall~~ must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, state engineer, ~~state highway commissioner~~ director of the department of transportation, state forester, ~~state director of the game and fish commissioner department~~, director of the state library librarian, and state treasurer ~~shall be~~ are ex officio members of the board and shall take care that the interests of the state are protected.

\*\* SECTION 94. AMENDMENT. Section 55-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. ~~A~~ The state outdoor recreation interagency council ~~shall exist and shall be~~ is composed of the state engineer of the water commission, ~~commissioner of the state director of the game and fish department~~, superintendent of the state historical board, ~~commissioner of the state highway department~~ director of the department of transportation, executive secretary of the state soil conservation committee, state parks and recreation director, chairman of the state water commission, state health officer, director of the economic development commission, state forester, and

\* NOTE: Section 55-01-01 was also amended by section 1 of House Bill No. 1307, chapter 638.

\*\* NOTE: Section 55-08-02.1 was also amended by section 46 of Senate Bill No. 2058, chapter 95, and by section 19 of Senate Bill No. 2054, chapter 640.

the commissioner of university and school lands. The governor or his the governor's designee ~~shall be~~ is the council chairman.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations which are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member ~~shall~~ have has one vote in such these matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with ~~such~~ the meetings.
3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use of federal aid funds which the state may become eligible to receive.
4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.
5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

\* SECTION 95. AMENDMENT. Section 55-11-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-11-10. Advisers to the state parks and recreation department. The superintendent of the state historical board, the state commissioner of agriculture, the state forester, and the ~~state~~ state director of the game and fish commissioner department shall serve as advisers to the department. ~~Such~~ The advisers may, in the discretion of the department, attend meetings dealing with the purposes of this chapter but ~~shall~~ have no right to vote. This section does not prevent the department from meeting from time to time in its discretion without the participation of the advisers.

\*\* SECTION 96. AMENDMENT. Section 57-02-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section ~~shall be~~ are exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would

\* NOTE: Section 55-11-10 was repealed by section 41 of Senate Bill No. 2054, chapter 640.

\*\* NOTE: Section 57-02-08.4 was also amended by section 2 of Senate Bill No. 2211, chapter 649.

have been due on the exempt acreage, and that the landowner has filed the required agreement. The amount of the wetlands exemption must be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the director of the game and fish commissioner department, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated ~~shall be~~ must computed, and the property owner shall pay the difference between ~~such this~~ amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, ~~shall does~~ not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property ~~shall be~~ is exempt under this section unless the tax commissioner has certified to the county auditor of each county before August first of the taxable year that funds are available in the state treasury which may be used for payment of any state obligations under section 57-02-08.5.

SECTION 97. AMENDMENT. Section 57-02-08.6 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.6. Authorization for receipt of funds. The state treasurer ~~shall be~~ is authorized to receive funds for this program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11 and all income and moneys derived from the investment of ~~such~~ the funds must be credited to the fund for this program. The ~~state~~ director of the game and fish commissioner department, the commissioner of agriculture, and the state engineer shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

SECTION 98. AMENDMENT. Section 57-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-02. Imposition of payments. The ~~state~~ director of the game and fish commissioner department shall annually make payments, subject to legislative appropriations, to the counties in which property subject to valuation is located pursuant to the provisions of this chapter. ~~Such~~ The



payments ~~shall be~~ are in lieu of taxes which would otherwise be available to ~~such~~ the counties if the real property upon which these payments are based were not owned by the state, United States, or a political subdivision of this state.

SECTION 99. AMENDMENT. Section 57-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-03. Assessment of property - Notice of county auditors. All property subject to valuation under this chapter ~~shall must~~ be assessed and valued for the purpose of making the payments herein provided for, in the same manner as other real property in this state is assessed and valued for tax purposes, except that improvements to any real property ~~shall may~~ not be considered in ~~such the~~ valuation. The county auditors of the counties in which ~~such~~ the property is located, prior to June thirtieth of each year, shall give notice in writing to the ~~state director of the game and fish commissioner~~ department and state tax commissioner of the value placed upon the property subject to valuation by the county boards of equalization.

SECTION 100. AMENDMENT. Section 57-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-04. Appearance before state board of equalization. The state board of equalization shall equalize the value placed upon any tract of land subject to valuation under this chapter. The ~~state director of the game and fish commissioner~~ department may appear before the state board of equalization to be heard for the purpose of opposing any unreasonable or unjust value placed upon property subject to valuation as equalized by the county board of equalization, or of opposing any increase or decrease in ~~such~~ the valuation as proposed by the state board of equalization, to the end that all valuations of like property may be uniform and equal throughout the state.

SECTION 101. AMENDMENT. Section 57-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

57-02.1-05. Computation of payment - Remittance to counties.

1. Upon receipt of the decision of the state board of equalization, the ~~state director of the game and fish commissioner~~ department shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies which apply to other taxable property in the taxing districts in which the property is located. ~~Such~~ The mill levies ~~shall must~~ be extended against the property subject to valuation in the same manner as used for other taxable property in ~~such the~~ taxing districts. The payments due to each county ~~shall be~~ are the figure determined as herein provided. No county ~~shall may~~ receive less in ~~such these~~ payments for any parcel or tract of land for any year than ~~such~~ the county received in payments made pursuant to this chapter for 1974.
2. After computing the payments due to each county, the ~~state director of the game and fish commissioner~~ department shall remit to ~~such~~ the counties the amounts due from the department, on or before March first of the succeeding year for which the assessments and valuations were made.

SECTION 102. AMENDMENT. Subsection 2 of section 61-31-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner with the advice of the director of the game and fish commissioner department, in accordance with ~~the~~ United States fish and wildlife service circular No. 39 (1971 edition).

SECTION 103. AMENDMENT. Subsection 4 of section 61-31-05 of the North Dakota Century Code is amended and reenacted as follows:

4. Agree that during a drought emergency up to one hundred percent of the grass cover that is part of a waterbank contract may be released to the landowner for haying or grazing, if the portion not released is protected by an adequate fence, including a temporary electric fence that has been approved by the commissioner. The release date ~~shall~~ must be determined by the commissioner with the approval of the state director of the game and fish commissioner department. The landowner ~~shall have~~ has first option to hay or graze released land at a per-acre [.40 hectare] rate, established by the commissioner, which ~~shall~~ must be deducted from the next waterbank payment. If the landowner does not qualify for emergency haying or grazing, the commissioner may conduct a lottery subject to the approval of the landowner, to award haying or grazing privileges to qualified applicants. If haying or grazing privileges are awarded to any person other than the landowner, the commissioner shall collect for the hay harvested and the landowner ~~shall~~ is entitled to receive ~~his~~ that person's full waterbank payment.

SECTION 104. AMENDMENT. Section 61-31-08 of the North Dakota Century Code is amended and reenacted as follows:

61-31-08. Conservation and development practices. For the purpose and implementation of wetland conservation and development plans as provided in sections 61-31-04 and 61-31-05, the commissioner ~~shall have~~ has authority to enter into agreements with the state director of the game and fish commissioner department for any assistance which may be appropriate and which will further the objectives of this chapter.

SECTION 105. AMENDMENT. Section 61-31-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner is authorized to receive funds for this program from any private or public source, and is also authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, director of the game and fish commissioner department, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop sources of funding to implement this chapter.

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter must be transferred to a special fund in the state treasury, which is hereby

created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.

SECTION 106. AMENDMENT. Section 61-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-02. Definitions. In sections 61-32-01 through 61-32-11, unless the context or subject matter otherwise provides:

1. "Commission" means the state water commission.
2. ~~"Commissioner" means the commissioner of the game and fish department.~~
3. ~~"Department" means the game and fish department.~~
3. "Director" means the director of the department.
4. "District" means a water resource district.
5. "Manmade wetland" means new or expanded water areas, or any portion thereof, created by excavation, diking, damming, or diversion, and determined by the state engineer and the ~~game and fish commissioner~~ director to have material wildlife values.
6. "Person" means any person, firm, partnership, association, corporation, agency, or any other private or governmental organization which includes, ~~but is not limited to,~~ any agency of the United States, a state agency, or any political subdivision of the state.
7. "Replacement wetland" means either restoration of previously drained natural wetland or manmade wetlands which are not used for mitigation for any other project.
8. "Sheetwater" means shallow water from any source that floods land not normally subject to standing water.
9. "State engineer" means the state engineer appointed by the state water commission pursuant to section 61-03-01.
10. "Water resource board" means the water resource district's board of managers.
11. "Wetland" means a natural depressional area that is capable of holding shallow, temporary, intermittent, or permanent water. It ~~shall~~ does not include sheetwater.

SECTION 107. AMENDMENT. Section 61-32-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-03. Permit to drain waters required - Replacement of wetlands - Downstream impacts - Penalty. Any person, before draining water from a wetland, or any series thereof, which has a watershed area comprising eighty

acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the state engineer. The state engineer shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the wetland for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to the state engineer for final approval. A permit may not be granted until the state water resources policy has been considered and an investigation discloses that the water which will be drained from the wetland, or any series thereof, will not flood or adversely affect downstream lands. If the investigation shows that the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the register of deeds of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. In addition to the above requirements of this section, the state engineer and the ~~commissioner~~ director must jointly find that the wetland acres proposed to be drained will be replaced by an equal acreage of replacement wetlands, or through debits to the wetland bank as provided in section 61-32-05, before any permit for drainage ~~can~~ may be approved by the state engineer or water resource board. The provisions of this section do not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the state engineer, for which mitigation is required as part of ~~such~~ the project.

Any person draining, or causing to be drained, water of a wetland, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, is guilty of an infraction, and ~~shall be~~ is required to restore the wetland so drained in accordance with sections 61-32-01 through 61-32-11. The state engineer may adopt rules for temporary permits for emergency drainage.

SECTION 108. AMENDMENT. Section 61-32-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-04. Administration - Rulemaking authority - Guidelines. The state engineer and, where specified, the ~~commissioner~~ director shall adopt rules to implement sections 61-32-01 through 61-32-11, including rules for procedure. The rules must be consistent with the following guidelines and the other provisions of sections 61-32-01 through 61-32-11:

1. The requirement that wetlands proposed to be drained must be replaced by an equal acreage of replacement wetlands is not applicable to sheetwater, regardless of the area covered by sheetwater.
2. Purchase, easement, lease, or other acquisition that is necessary to comply with sections 61-32-01 through 61-32-11 ~~shall~~ must be limited to willing sellers. When land is removed from the tax base to protect wetlands, replacement payments ~~shall~~ must be made by the entity which purchases the land so that the amount of money that would otherwise be received in taxes if ~~such~~ the land was not removed from the tax base is not diminished.

3. The state engineer and the ~~commissioner~~ director shall jointly determine whether the number of replacement wetland acres comply with the replacement requirements of sections 61-32-01 through 61-32-11. The area of a wetland must be jointly determined by the normal water level. It is not necessary to replace wetlands proposed to be drained with restored wetlands of the same type or classification.
4. Any person who proposes to drain a wetland for which a permit is required shall pay ten percent of the cost of acquisition, easement, lease, and construction of replacement wetlands. The other ninety percent must be paid by either federal, state, or private interests, or any combination thereof. Any person may pay more than ten percent if that person desires. The cost of acquisition for replacement acres must be determined by average costs of wetland acres placed in the wetlands bank, as prescribed by the state engineer and the ~~commissioner~~ director. Federal, state, and private wildlife and water entities shall cooperate and work together to locate, make contacts with landowners, do appraisals, and perform other tasks necessary for lease, purchase, or other acquisition to meet the replacement requirements of sections 61-32-01 through 61-32-11.
5. In order to satisfy the replacement of wetlands requirement, manmade wetlands with material wildlife values, or any portion thereof, as determined by the state engineer and the ~~commissioner~~ director, are eligible along with restoration of drained natural wetlands to comply with the replacement of wetlands requirement.
6. The replacement of wetlands requirement for each drainage proposal or project must be accomplished with approximately fifty percent of the replacement wetlands being located in the county or contiguous counties in which the proposed drainage is located, and with the other approximately fifty percent of replacement wetlands being located anywhere in this state. If the state engineer and the ~~commissioner~~ director jointly find that replacement wetland acres are not available in the county or contiguous counties where the proposed drainage is located, replacement wetlands may be obtained anywhere in the same biotic area.
7. Any purchase, easement, lease, or other acquisition under sections 61-32-01 through 61-32-11 may not obstruct the natural or existing flow of water of any natural watercourse or artificial channel to the detriment of any upstream or downstream landowner.

SECTION 109. AMENDMENT. Section 61-32-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-05. Wetlands bank. The state engineer and the ~~commissioner~~ director shall jointly establish a wetlands bank. The records of acreages of replacement wetlands debited from and credited to ~~such~~ the bank must be maintained by the state engineer. The acreages of all replacement wetlands constructed after January 1, 1987, must be carried as a credit in ~~such~~ the bank. However, any unauthorized drainage constructed after July 1, 1975, which is closed or restored as a result of final enforcement action pursuant to section 61-32-07, may not be credited to the wetlands bank. The acreages of all wetlands drained after January 1, 1987, except those projects for

which permits were applied for prior to January 1, 1987, must be charged as a debit against acreage credit balances. No more than two thousand five hundred acres [1011.70 hectares] may be carried as a debit balance to the wetlands bank, except for drainage of wetlands for which a permit is not required. Wetlands drained during surface coal mining operations may not be charged as a debt against acreage credit balances.

SECTION 110. AMENDMENT. Section 61-32-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-06. Uniform wetlands classification. The state engineer and the ~~commissioner~~ director shall establish a uniform classification system of wetlands. All federal, state, and local entities shall follow this classification system when referring to wetlands in this state.

SECTION 111. AMENDMENT. Section 61-32-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-09. Wetlands replacement fund - Continuing appropriation. There is hereby created a special revolving wetlands replacement fund in the state treasury to which funds received by the ~~commissioner~~ director pursuant to sections 61-32-01 through 61-32-11 must be deposited. The ~~commissioner~~ director is authorized to receive funds for the wetlands replacement fund from any private or public source. The ~~commissioner~~ director shall work with the governor, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop additional funding to implement sections 61-32-01 through 61-32-11. All funds received from any source, not including state revenues, are hereby appropriated to the ~~commissioner~~ director, and may be expended for the purpose of implementing sections 61-32-01 through 61-32-11 including acquisition, easement, lease, and construction of replacement wetlands.

\*SECTION 112. AMENDMENT. Subsection 1 of section 61-33-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of state parks and recreation, the ~~state~~ director of the game and fish ~~commissioner~~ department, and the state health officer, or their representative.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Subsection 1 of section 61-33-09 was also amended by section 39 of Senate Bill No. 2054, chapter 640.

## CHAPTER 232

SENATE BILL NO. 2036  
(Legislative Council)  
(Interim Game and Fish Committee)

### CLAM CONTROL

AN ACT to create and enact a new section to chapter 20.1-02 and three new subsections to section 20.1-03-12 of the North Dakota Century Code, relating to fees for licenses and permits to harvest clams; and to amend and reenact subsection 42 of section 20.1-01-02, sections 20.1-01-03, 20.1-01-14, subsection 4 of section 20.1-02-04, subsections 1 and 2 of section 20.1-02-15, subsections 1 and 2 of section 20.1-08-02, subsection 1 of section 20.1-08-04, and section 20.1-10-02 of the North Dakota Century Code, relating to the definition of, ownership of, duties of the game and fish commissioner concerning, and proclamations of the governor relating to, wildlife.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 42 of section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

42. "Wildlife" means any member of the animal kingdom including ~~without limitation~~ any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by the board of animal health, or birds or animals held in private ownership.

\*\* SECTION 2. AMENDMENT. Section 20.1-01-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-01-03. Ownership and control of ~~game and fish wildlife~~ is in the state - Damages - Schedule of monetary values. The ownership of and title to all ~~wild birds, fish, and wild animals~~ wildlife within this state ~~shall be~~ is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation thereof, and for maintaining action for damages as herein provided. Any person catching, killing, taking, trapping, or possessing any ~~wild birds, fish, or wild animals~~ wildlife protected by law at any time or in any manner ~~shall be~~ is deemed to have consented that the title thereto ~~shall remain~~ remains in this state for the purpose of regulating the taking, use, possession, and disposition thereof. The state, through the office of attorney general, may institute and maintain any action for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of ~~wild birds, fish, or wild animals~~ wildlife, except as may be authorized by law. The state has a property

\* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2038, chapter 230; by section 1 of Senate Bill No. 2043, chapter 233; and by section 3 of Senate Bill No. 2050, chapter 231.

\*\* NOTE: Section 20.1-01-03 was also amended by section 4 of Senate Bill No. 2050, chapter 231.

interest in all protected ~~wild birds, fish, and wild animals~~ wildlife. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The commissioner shall ~~promulgate~~ adopt by rule a schedule of monetary values of various species of ~~fish and wildlife, said~~ the values to represent the replacement costs of ~~said fish and the wildlife and the value lost to the state due to the destruction or injury of said the species, together with other material elements of value.~~ In any action brought under this section, the schedule ~~shall constitute~~ constitutes the measure of recovery for the ~~fish and wildlife killed or destroyed.~~ The funds ~~so~~ recovered ~~shall~~ must be deposited in the general fund, and devoted to the propagation and protection of desirable species of ~~fish and~~ wildlife.

SECTION 3. AMENDMENT. Section 20.1-01-14 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-14. Possession or control of ~~birds, fish, or animals~~ wildlife prima facie evidence of criminal offense. Possession or control by any person of any ~~birds, animals, or fish~~ wildlife, or any part thereof, the killing, taking, or possessing of which is unlawful, is prima facie evidence ~~such game the wildlife~~ was caught, taken, or killed in this state in violation of this title.

\* SECTION 4. AMENDMENT. Subsection 4 of section 20.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Enforce state laws involving ~~game animals, game birds, fish, and harmless birds and animals~~ wildlife.

\*\* SECTION 5. AMENDMENT. Subsections 1 and 2 of section 20.1-02-15 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Of a peace officer for the purpose of enforcing this title and any other state laws, ~~or rules, or regulations~~ relating to ~~big game, small game, fur-bearers, fish, and other~~ wildlife.
2. To make arrests upon view and without warrant for any violation, committed in ~~his~~ that person's presence, of this title and any other state laws, ~~or rules, or regulations~~ relating to ~~big game, small game, fur-bearers, fish, and other~~ wildlife.

SECTION 6. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Clam harvesting privilege fee. There is hereby imposed, for the grant of the privilege of the right to harvest clams, a privilege fee of ten percent of the market value of clam shells harvested in this state. The fee imposed by this section must be paid to the commissioner for deposit in the game and fish fund. The commissioner may adopt rules under chapter 28-32 for the administration of the fee imposed under this section.

SECTION 7. Three new subsections to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

For a resident commercial clam license, one hundred dollars.

\* NOTE: Subsection 4 of section 20.1-02-04 was also amended by section 12 of Senate Bill No. 2050, chapter 231.

\*\* NOTE: Section 20.1-02-15 was also amended by section 21 of Senate Bill No. 2050, chapter 231.



For a nonresident commercial clam license, one thousand dollars.

For a commercial clam dealer's permit, two thousand dollars. In addition, the applicant shall submit to the commissioner a surety bond in the sum of two thousand dollars.

\* SECTION 8. AMENDMENT. Subsections 1 and 2 of section 20.1-08-02 of the North Dakota Century Code are amended and reenacted as follows:

1. That any species of ~~big game, small game, fish, or fur-bearers~~ wildlife for which an open season is provided, are in danger of depletion or extinction, or when necessary for proper protection during the propagating period, ~~he~~ the governor may, by order, provide protection for ~~such~~ that species additional to that provided by law.
2. That any species of ~~big game, small game, or fish,~~ wildlife have become sufficient in numbers to warrant an open season, or to be detrimental, or a nuisance to the farmers of the state, ~~he~~ the governor may, by order, declare an open season thereon, or may extend the open season provided by law.

SECTION 9. AMENDMENT. Subsection 1 of section 20.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A gubernatorial order or proclamation under this chapter ~~shall~~ must prescribe, as to each species of ~~big game, small game, fish, or fur-bearers~~ wildlife named therein, the following:
  - a. In what manner they may be taken.
  - b. In what numbers they may be taken and possessed and may limit ~~such~~ the numbers by sex.
  - c. In what places they may be taken.
  - d. At what times they may be taken and possessed.

SECTION 10. AMENDMENT. Section 20.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-10-02. ~~Game or fish~~ Wildlife packed or commingled with contraband ~~to must~~ be confiscated. If ~~two or more animals, birds, or fish~~ any wildlife, or parts thereof, ~~are~~ is packed, stored, or contained in the same shipment, bag, or other receptacle or ~~are~~ is otherwise commingled, and one or more has been taken in violation of this title, the entire contents ~~shall~~ must be confiscated.

Approved April 16, 1991  
Filed April 18, 1991

\* NOTE: Section 20.1-08-02 was also amended by section 66 of Senate Bill No. 2050, chapter 231.

## CHAPTER 233

SENATE BILL NO. 2043  
(Legislative Council)  
(Interim Game and Fish Committee)

### TAKING OF FUR-BEARERS

AN ACT to amend and reenact subsection 11 of section 20.1-01-02 and section 20.1-07-04 of the North Dakota Century Code, relating to the definition of fur-bearers for game and fish purposes and depredating fur-bearing animals; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 11 of section 20.1-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes.

SECTION 2. AMENDMENT. Section 20.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-07-04. Depredating fur-bearing animals - Destruction and disposition. A landowner or tenant or that person's agent may destroy catch or kill any wild fur-bearing animal which that is committing depredations upon his that person's poultry, domestic animals, or crops, but he shall. A landowner or tenant or that person's agent shall notify and obtain the approval of the commissioner before catching or killing a mountain lion or black bear. Except as provided in this section, a landowner or tenant or that person's agent may not commercialize in, sell, or ship an animal or the pelt or any part of such an animal caught or killed under this section during the closed season. The landowner or tenant or that person's agent may possess a mountain lion or black bear killed under this section.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991  
Filed March 11, 1991

- \* NOTE: Section 20.1-01-02 was also amended by section 1 of Senate Bill No. 2036, chapter 232; by section 1 of Senate Bill No. 2038, chapter 230; and by section 3 of Senate Bill No. 2050, chapter 231.

## CHAPTER 234

HOUSE BILL NO. 1552  
(Representatives Boehm, Muhs)  
(Senator Meyer)

### PREDATOR CONTROL

AN ACT to create and enact a new subsection to section 20.1-02-05 of the North Dakota Century Code, relating to the powers of the game and fish commissioner; to amend and reenact subdivision c of subsection 19 of section 20.1-02-05 of the North Dakota Century Code, relating to the powers and duties of the game and fish commissioner; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision c of subsection 19 of section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Carrying out practices ~~which that~~ will alleviate depredations caused by predatory animals and big game animals.

SECTION 2. A new subsection to section 20.1-02-05 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Carry out a coyote depredation prevention program by conducting practices that will alleviate depredations caused by coyotes.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, the sum of \$80,000, or so much thereof as may be necessary, to the game and fish department for the purpose of carrying out a coyote depredation prevention program for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 10, 1991  
Filed April 10, 1991

\* NOTE: Section 20.1-02-05 was also amended by section 13 of Senate Bill No. 2050, chapter 231.

## CHAPTER 235

HOUSE BILL NO. 1398  
(Representatives Hanson, Kroeber, Henegar)  
(Senator Marks)

### **BIGHORN SHEEP TROPHIES**

AN ACT to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to the plugging or tagging of mounted bighorn sheep trophy heads and horns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Mounted bighorn sheep trophy heads and horns - Plugging or tagging required - Rules. Any person who brings into this state any mounted trophy head or horns, has any trophy head or horns mounted in this state, or comes into possession of any horns of dall sheep, stone sheep, desert bighorn sheep, or rocky mountain bighorn sheep shall have the trophy head or horns plugged or tagged by the department. A trophy head or horns plugged or tagged in the state, province or territory of Canada, or in Mexico where the sheep was taken satisfies the requirements of this section. The department may adopt rules to implement the provisions of this section.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 236

HOUSE BILL NO. 1267  
(Oban)

### GAME AND FISH HEARING BOARD

AN ACT to repeal sections 20.1-02-19, 20.1-02-20, 20.1-02-21, and 20.1-02-22 of the North Dakota Century Code, relating to the game and fish hearing board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. REPEAL. Sections 20.1-02-19, 20.1-02-20, 20.1-02-21, and 20.1-02-22 of the North Dakota Century Code are repealed.

Approved March 11, 1991  
Filed March 11, 1991

\* NOTE: Section 20.1-02-19 was amended by section 31 of Senate Bill No. 2050, chapter 231.

## CHAPTER 237

HOUSE BILL NO. 1258  
(Representatives Oban, A. Olson, Hanson)  
(Senators Heinrich, Nelson, Meyer)

### GAME AND FISH ADVISORY BOARD MEMBERS

AN ACT to amend and reenact sections 20.1-02-23, 20.1-02-24, and 20.1-02-25 of the North Dakota Century Code, relating to appointments to the game and fish advisory board; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-23. Game and fish advisory board - Appointment - Qualifications - Term. ~~There is hereby created a~~ The state game and fish advisory board ~~consisting~~ consists of eight members, one from each of the following districts, appointed by the governor:

1. District one shall consist of the counties of Divide, McKenzie, and Williams.
2. District two shall consist of the counties of Bottineau, Burke, McHenry, Mountrail, Pierce, Renville, and Ward.
3. District three shall consist of the counties of Benson, Cavalier, Eddy, Ramsey, Rolette, and Towner.
4. District four shall consist of the counties of Grand Forks, Nelson, Pembina, and Walsh.
5. District five shall consist of the counties of Cass, Ransom, Richland, Sargent, Steele, and Traill.
6. District six shall consist of the counties of Barnes, Dickey, Foster, Griggs, LaMoure, Logan, McIntosh, Stutsman, and Wells.
7. District seven shall consist of the counties of Burleigh, Emmons, Grant, Kidder, McLean, Mercer, Morton, Oliver, Sheridan, and Sioux.
8. District eight shall consist of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark.

Not less than four ~~Four~~ members shall ~~must~~ be bona fide farmers or ranchers and four members must be bona fide sportsmen. Each farmer or rancher appointment must be made from a list of three names submitted by agricultural organizations requested by the governor to submit the list and each sportsman appointment must be made from a list of three names submitted by outdoor, sportsmen, wildlife, and conservation organizations requested by the governor

to submit the list. Appointments ~~shall be~~ are for a term of four years from the first day of July of the year of expiration of the basic term, and until a successor has been appointed and qualified. Vacancies occurring other than by the expiration of an appointive term ~~shall may~~ be filled by appointment for the remainder of the term only. No member of the board may serve longer than two full terms. The members of the advisory board ~~shall be~~ are subject to removal by the governor for cause only. The advisory board shall select from their members a chairman, vice chairman, and secretary who ~~shall~~ serve in ~~such these~~ positions until June thirtieth of the year next following their selection.

SECTION 2. AMENDMENT. Section 20.1-02-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-24. Compensation. Each member of the advisory board ~~shall~~ is entitled to be paid a per diem of fifty dollars for each day of service in going to, attending, and returning from the meetings required by section 20.1-02-25 to be held in ~~his~~ that person's respective district and the meetings of the advisory board. Each member ~~shall~~ is entitled to be reimbursed for necessary and actual expenses at the rates and in the manner provided by law for other state officers. ~~Such~~ The compensation and expenses ~~shall must~~ be paid out of department appropriations.

\* SECTION 3. AMENDMENT. Section 20.1-02-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-25. Meetings and duties. Each board member shall hold a public meeting at least twice each fiscal year in ~~his~~ that person's respective district to make ~~their~~ presentations and to determine the needs and the opinions of those interested in ~~such these~~ activities. The board shall meet at least twice each fiscal year. The board has the authority to advise the commissioner regarding any policy of hunting, fishing, and trapping regulations, and may make general recommendations concerning the operation of the department and its programs ~~which that~~ the commissioner may carry out. The board shall forward copies of ~~its~~ recommendations to the governor. This section does not limit or restrict the powers, duties, and authority of the governor in the issuance of orders and proclamations as provided in chapter 20.1-08.

SECTION 4. EFFECTIVE DATE. This Act applies to appointments made after June 30, 1992.

Approved March 18, 1991  
Filed March 19, 1991

\* NOTE: Section 20.1-02-25 was also amended by section 32 of Senate Bill No. 2050, chapter 231.

## CHAPTER 238

HOUSE BILL NO. 1038  
(Legislative Council)  
(Interim Game and Fish Committee)

### LANDOWNER GRATIS HUNTING LICENSES

AN ACT to amend and reenact subsections 3, 5, and 7 of section 20.1-03-11 of the North Dakota Century Code, relating to licenses issued to landowners to hunt big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 3, 5, and 7 of section 20.1-03-11 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing of an affidavit describing a minimum of a quarter section [64.75 hectares] of land owned or that is leased for agricultural purposes or owned by any that person and which is within a district open for hunting of deer, ~~such person shall receive; without charge;~~ a license to hunt deer. The license ~~shall~~ must include a description of the land described in the affidavit and may be used to hunt deer only upon such that land.
5. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive without charge, upon filing of an affidavit describing a minimum of a quarter section [64.75 hectares] of land owned or that is leased for agricultural purposes or owned by any that person and which is within a district or unit open for hunting of antelope, ~~such person shall receive; without charge;~~ a license to hunt antelope. The license must include a description of the land described in the affidavit and may be used to hunt antelope only upon such that land. The number of licenses issued without charge under this section subsection may not exceed the total number of licenses prescribed for each district or unit in the governor's proclamation. If the number of applications for licenses issued without charge under this section subsection exceeds the number of licenses prescribed for the district or unit in the governor's proclamation less any licenses ~~which that~~ are otherwise designated to be issued with a charge under this section subsection, the licenses to be issued without charge ~~will~~ must be issued by lottery as prescribed in the governor's proclamation. If the number of licenses prescribed for the district or unit in the governor's proclamation exceeds fifty and if the number of applications for these licenses exceeds the number of licenses prescribed for the district or unit in the governor's proclamation,

\* NOTE: Subsection 7 of section 20.1-03-11 was also amended by section 1 of House Bill No. 1504, chapter 239.



then one-half of the licenses exceeding fifty ~~will~~ must be issued by lottery as prescribed in the governor's proclamation and may not be issued to landowners without charge. The licenses issued by lottery as prescribed in this ~~section~~ subsection are not subject to the provisions of subdivision a of subsection 2 of section 20.1-08-04.

7. Upon execution and A person who leases land for agricultural purposes and who actively farms or ranches that land or a landowner is entitled to receive, upon payment of the fee requirement for a resident big game license and filing of an affidavit describing a minimum of one a quarter section [64.75 hectares] of land owned or that is leased and actively farmed or ranched for agricultural purposes or owned by any that person and which is within a district or unit open for hunting of elk, that person is entitled to receive; upon payment of the fee requirement for a resident big game license; a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; and the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and the east one-half of township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 239

HOUSE BILL NO. 1504  
(Wardner, Henegar, Soukup)

**ROCKY MOUNTAIN ELK FOUNDATION RAFFLE**

AN ACT to amend and reenact subsection 7 of section 20.1-03-11 and section 20.1-08-04.6 of the North Dakota Century Code, relating to licenses to hunt elk and to creation of a rocky mountain elk foundation raffle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 7 of section 20.1-03-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Upon execution and filing of an affidavit describing a minimum of one-quarter section [64.75 hectares] of land owned or leased and actively farmed or ranched by any person within a district or unit open for hunting of elk, that person is entitled to receive, upon payment of the fee requirement for a resident big game license, a preferential landowner license to hunt elk within the district or unit in which the land described in the affidavit is located. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-seven north, range ninety-seven west; township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; and the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and ~~the east one-half of~~ township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not be less than one permit, nor exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's

\* NOTE: Subsection 7 of section 20.1-03-11 was also amended by section 1 of House Bill No. 1038, chapter 238.

proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the affidavit is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit.

SECTION 2. AMENDMENT. Section 20.1-08-04.6 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - license recipients not eligible to apply again Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor shall prescribe prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation shall hold a raffle under rules adopted by the commissioner with only residents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds must be used for elk management and related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the commissioner requires. A person who has received a may only receive one license to hunt elk is not eligible to apply for another such license issued by lottery and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle in a lifetime.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 240

SENATE BILL NO. 2511  
(Langley, Meyer)

**NONRESIDENT FUR BUYERS AND SHIPPERS**

AN ACT to amend and reenact subsection 15 of section 20.1-03-12 of the North Dakota Century Code, relating to licenses for nonresident green fur buyers or shippers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. For a license to a nonresident buyer or shipper of green furs, or ~~his~~ that person's agent, five hundred the amount that the nonresident buyer or shipper of green furs would pay for a nonresident buyer or shipper of green furs license or comparable license in that person's state of residence, or fifty dollars, whichever is greater.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 241

HOUSE BILL NO. 1482  
(Nelson)

### GUIDE AND OUTFITTER DEER LICENSE

AN ACT to create and enact a new subsection to section 20.1-03-12 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to fees for game and fish licenses and permits and to guides and outfitters providing white-tailed deer licenses to nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

For a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents, two hundred and fifty dollars.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Guides and outfitters - White-tailed deer licenses - Fees. The governor shall make any white-tailed deer licenses remaining after the second sale available to guides or outfitters licensed in this state. The first one hundred of any such remaining licenses, or all such licenses if less than one hundred remain, must be for antlered deer only. A guide or outfitter may not purchase or obtain more than five white-tailed deer licenses under this section in any one year. A guide or outfitter shall pay the fee required for a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents for each license purchased under this section. A guide or outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one white-tailed deer license per nonresident as provided in this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

Approved March 26, 1991  
Filed March 26, 1991

## CHAPTER 242

HOUSE BILL NO. 1313  
(Representatives Belter, Dalrymple)  
(Senators Nelson, Meyer)

### GAME AND FISH FEES

AN ACT to create and enact three new subsections to section 20.1-03-12 of the North Dakota Century Code, relating to fees for game and fish licenses and permits; and to amend and reenact section 20.1-03-12.2 of the North Dakota Century Code, relating to game and fish application fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new subsections to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

For a resident swan license, five dollars.

For a nonresident swan license, twenty dollars.

For a resident and nonresident sandhill crane license, five dollars.

SECTION 2. AMENDMENT. Section 20.1-03-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.2. ~~Elk, moose, and bighorn sheep - Application fee~~ Hunting license and permit application fees. Each person applying for a license or permit to hunt elk, moose, ~~or~~ bighorn sheep, ~~or~~ antelope under this chapter ~~shall~~ must be assessed a nonrefundable application fee of three dollars for each ~~such~~ license or permit application in addition to the fee charged for the issuance of the license or permit under this chapter.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 243

HOUSE BILL NO. 1035  
(Legislative Council)  
(Interim Game and Fish Committee)

### COMBINATION GAME AND FISH LICENSES

AN ACT to create and enact a new subsection to section 20.1-03-12 and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to the establishment of a combination game and fish license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-12 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

For a combination license, twenty-five dollars.

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Combination license - Commissioner authorized to establish. The commissioner may establish a combination license consisting of a general game license, resident fishing license, resident small game license, habitat stamp, and fur-bearer license.

Approved March 19, 1991  
Filed March 19, 1991

# CHAPTER 244

SENATE BILL NO. 2048  
(Legislative Council)  
(Interim Game and Fish Committee)

## HUNTING LICENSE LOTTERY FEE FORFEITURE

AN ACT to amend and reenact section 20.1-03-30 of the North Dakota Century Code, relating to the forfeiture of game and fish license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 20.1-03-30 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-30. ~~Processing fee for application~~ Application for ~~antelope~~ license ~~when~~ issued by lottery - Forfeiture of fee if not eligible to apply. The fee remitted by any person who applies for a ~~special resident antelope~~ license issued by lottery when by any law or proclamation ~~he~~ that person is ineligible to apply because of any waiting period, ~~shall be~~ is forfeited. The commissioner shall notify the applicant ~~he~~ that the applicant is ineligible for ~~such~~ this reason and the fee has been forfeited. The fees received by the department pursuant to this section ~~shall~~ must be deposited in the state game and fish fund.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Section 20.1-03-30 was also amended by section 48 of Senate Bill No. 2050, chapter 231.



## CHAPTER 245

SENATE BILL NO. 2396  
(Senator Nalewaja)  
(Representative Wilkie)

### **BIG GAME TRANSPORTATION PERMITS**

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to permits for the transportation of big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Permits for the transportation of big game. Upon request, a resident or nonresident may obtain a permit for the transportation of big game from the commissioner, deputy commissioner, chief game wardens, district game wardens, or any law enforcement officer. The commissioner shall determine the criteria for and the conditions under which a permit for the transportation of big game may be issued under this section.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 246

SENATE BILL NO. 2047  
(Legislative Council)  
(Interim Game and Fish Committee)

### **GUNS FOR TAKING GAME BIRDS**

AN ACT to repeal section 20.1-04-09 of the North Dakota Century Code, relating to guns lawfully usable in pursuing or taking game birds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 20.1-04-09 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 247

HOUSE BILL NO. 1434  
(Gilmore, Henegar)

### GUN DOG TRAINER PERMITS

AN ACT to create and enact a new section to chapter 20.1-04 of the North Dakota Century Code, relating to gun dog permits and permit fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-04 of the North Dakota Century Code is created and enacted as follows:

Gun dog activities - Permit required - Fee.

1. The commissioner shall issue a permit for the following gun dog activities:
  - a. The training exercises of a resident or nonresident professional trainer;
  - b. The training exercises of a nonresident amateur trainer who brings more than four gun dogs into the state; and
  - c. Hosting field trials that use live wild birds.
2. The application for the permit must be in a form prescribed by the commissioner and must be accompanied by the appropriate fee.
3. Upon the receipt of the completed application and fee the commissioner shall issue a permit for a specified period of time and shall require the permit holder to submit an annual report.
4. The fees for the permits are:
  - a. For a resident professional gun dog trainer for training exercises or hosting field trials, ten dollars.
  - b. For a nonresident professional gun dog trainer for training exercises or hosting field trials, one hundred dollars.
  - c. For a permit to a nonresident amateur who brings more than four gun dogs into this state, twenty-five dollars.
5. For purposes of this section a professional trainer is a person who trains any breed of gun dog for remuneration that is the basis for that person's livelihood.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 248

SENATE BILL NO. 2042  
(Legislative Council)  
(Interim Game and Fish Committee)

### **BIG GAME HUNTER GARMENTS**

AN ACT to amend and reenact section 20.1-05-06 of the North Dakota Century Code, relating to daylight fluorescent orange garments worn by big game hunters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-05-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-05-06. Big game hunters to wear daylight fluorescent orange garments - Exception - Penalty. Every person, while hunting big game, shall wear a head covering and an outer garment above the waistline, both of daylight fluorescent orange color, totaling four hundred square inches [2580.64 square centimeters] or more of ~~clothing~~ solid fluorescent orange color, and both to be worn conspicuously on the person. This section does not apply to any person hunting big game with bow and arrow during special bow hunting seasons. Any person who violates this section is guilty of a class 2 noncriminal offense.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 249

SENATE BILL NO. 2046  
(Legislative Council)  
(Interim Game and Fish Committee)

### PADDLEFISH AND STURGEON PROTECTION

AN ACT to amend and reenact section 20.1-06-02 of the North Dakota Century Code, relating to the protection of fish species of special concern; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-06-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-02. Fish protected - Penalty. No person ~~shall~~ may take, attempt to take, catch, kill, or destroy any species of fish in this state except as provided in this title. Any person who takes into possession and kills or destroys any paddlefish or pallid sturgeon in violation of this title is guilty of a class C felony.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 250

SENATE BILL NO. 2040  
(Legislative Council)  
(Interim Game and Fish Committee)

### HUNTING PREDATORS AND SHOOTING PRESERVES

AN ACT to create and enact a new section to chapter 20.1-08 of the North Dakota Century Code, relating to orders and proclamations of the governor; to amend and reenact section 20.1-12-05 of the North Dakota Century Code, relating to the operation of shooting preserves; and to repeal section 20.1-01-10 of the North Dakota Century Code, relating to the hours for hunting game birds and protected animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

Governor's proclamation concerning the hunting of predators. Notwithstanding any other provision of law, the governor may provide by proclamation for the taking of any wildlife, whether protected or unprotected, determined by the governor to be a harmful predator, in a manner and number, at any place, and during any time, including after dark, as the governor prescribes.

\* SECTION 2. AMENDMENT. Section 20.1-12-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-12-05. Operation of shooting preserve - Season - Search of premises permitted. Any guest of a shooting preserve operator, in possession of a general game license, may harvest any game bird within the defined limits of the shooting preserve, subject to this chapter. The shooting preserve operator may establish that person's own restrictions on the age, sex, and number of each game bird that may be taken by each guest, and the fee to be paid by each guest. The exterior boundaries of each shooting preserve must be clearly defined and posted with signs erected around the extremity at intervals of three hundred feet [91.44 meters] or less. Each shooting preserve operator and that person's guest shall comply with and be subject to chapter 20.1-01. Shooting preserve operators may restrict or set the hours during which game birds may be hunted, subject to ~~section 20.1-01-10~~ gubernatorial proclamation. The season for shooting preserves may be all or part of the seven-month period beginning September first and ending March thirty-first of the following year. All permits must be issued upon the express condition that the permittee agrees that any law enforcement officer or any representative of the commissioner may enter and search the premises or any part thereof at any reasonable time to ensure compliance with state laws and the commissioner's rules and regulations.

SECTION 3. REPEAL. Section 20.1-01-10 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Section 20.1-12-05 was also amended by section 85 of Senate Bill No. 2050, chapter 231.

## CHAPTER 251

SENATE BILL NO. 2051  
(Legislative Council)  
(Interim Game and Fish Committee)

**BIG GAME PROCLAMATIONS**

AN ACT to amend and reenact subsection 2 of section 20.1-08-04 of the North Dakota Century Code, relating to the governor's proclamation concerning the taking of big game.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 20.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The governor in ~~his~~ the governor's proclamation or order may determine the number of resident and nonresident big game licenses to be issued for the taking of each species, age, or sex. When a limited number of big game licenses or special permits are to be issued, ~~he~~ the governor shall by order or proclamation declare the manner of issuance of such the licenses and permits. The governor may by proclamation or order determine the time period for which a recipient of a big game license or special permit obtained by lottery shall be is ineligible to again apply for the same type of license or special permit shall be as follows:
  - a. ~~Five ensuing seasons for an antelope gun license.~~
  - b. ~~A period to be set by governor's proclamation for a deer gun license or special permit.~~

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 252

HOUSE BILL NO. 1329  
(Gabrielson, Payne)

### GAME AND FISH PROCLAMATION CONTENTS

AN ACT to amend and reenact section 20.1-08-05 of the North Dakota Century Code, relating to publication of gubernatorial game and fish proclamations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-05. Proclamation to be published - Exceptions - Period proclamation is in effect. Except as provided in subsection 4 of section 20.1-08-02, a summary of each order or proclamation issued by the governor pursuant to this chapter shall must be published once in the official newspaper of each county affected thereby. The summary must include a list of the species that may be harvested, the date that the season for each species opens and closes, the daily and possession limits for each species, any changes in regulations from the previous year, and any changes in units opened or closed to hunting or fishing from the previous year. The summary must also list the address and phone number of the game and fish department and state that a copy of the complete legal proclamation may be obtained from the department. No such order or proclamation shall take effect becomes effective until after such publication the department prints each complete proclamation or order and distributes a copy to each county auditor affected thereby.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 253

SENATE BILL NO. 2037  
(Legislative Council)  
(Interim Game and Fish Committee)

## BOATING ACCIDENTS

AN ACT to amend and reenact section 20.1-13-08 of the North Dakota Century Code, relating to boating collisions, accidents, casualties, and liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-08. Collisions, accidents, casualties, and liability. ~~It shall be the duty of the~~ The operator of a vessel involved in a collision, accident, or other casualty, so far as ~~he~~ that person can do so without serious danger to ~~his~~ that person's own vessel, crew, and passengers, ~~to shall~~ render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident, or other casualty. ~~He~~ That person shall also give ~~his~~ that person's name, address, and vessel identification in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of ~~one hundred dollars~~ an amount specified by the commissioner by rule, or a person disappears from ~~such the~~ vessel under circumstances that indicate death or injury, the operator ~~thereof~~ of the vessel shall file with the department a full description of the collision, accident, or other casualty, including such information as ~~said agency~~ the commissioner may, ~~by regulation,~~ require by rule.

Any operator of a vessel, or other person who complies with ~~the provisions of~~ this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted ~~shall~~ may not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance where the assisting person acts as an ordinary, reasonably prudent ~~man~~ person would have acted under the same or similar circumstances.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 254

SENATE BILL NO. 2039  
(Legislative Council)  
(Interim Game and Fish Committee)

### BOATING WHILE INTOXICATED

AN ACT to provide for implied consent to chemical testing for purposes of determining intoxication while operating a motorboat or vessel; to create and enact a new subsection to section 20.1-02-15.1 of the North Dakota Century Code, relating to the powers of the game and fish commissioner, deputy commissioner, and game wardens; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-02-15.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To enforce sections 2 through 15 of this Act.

SECTION 2. Implied consent to determine alcoholic and drug content of blood. Any person who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to sections 2 through 15, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in sections 2 through 15, "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under sections 2 through 15. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 5, under arrest and informing that person that the person is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of sections 2 through 15, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a motorboat or vessel for up to three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section

20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under sections 2 through 15.

SECTION 3. Chemical test of operator in serious bodily injury or fatal accident. Notwithstanding section 2 or 7, when the operator of a motorboat or vessel is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of section 20.1-13-07, the operator may be compelled by a game warden or a police officer to submit to a chemical test.

SECTION 4. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a game warden or a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 5. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal, is deemed not to have withdrawn the consent provided by section 2 and the chemical test may be given.

SECTION 6. Action following chemical test result for a motorboat or vessel operator. If a person submits to a chemical test under section 2, 4, or 5 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a motorboat or vessel, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state.

2. If a chemical test administered under section 2 or 5 was by saliva or urine sample or by drawing blood as provided in section 4 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent, shall forward to the commissioner a certified written report in the form required by the commissioner. If the statement was given because of the results of a chemical test, the report must show that the game warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the person was lawfully arrested, that the person was chemically tested under sections 2 through 15, and that the results of the test show that the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the game warden or officer.

**SECTION 7. Revocation of privilege to operate motorboat or vessel upon refusal to submit to testing.**

1. If a person refuses to submit to testing under section 2, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue to that person a statement of intent to prohibit the person from operating a motorboat or vessel. The statement serves as the commissioner's official notification to the person of the commissioner's intent to prohibit the person from operating a motorboat or vessel in this state and of the hearing procedures under sections 2 through 15. The commissioner, upon the receipt of the certified written report of the game warden or law enforcement officer in the form required by the commissioner, forwarded by the warden or officer within five days after issuing the statement of intent, showing that the warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07 or had observed that the motorboat or vessel was operated in a negligent, reckless, or hazardous manner as defined by the commissioner by rule, that

the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 2, shall prohibit the person from operating a motorboat or vessel in this state for the appropriate period under this section. The period for which a person is prohibited from operating a motorboat or vessel under this section is:

- a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a motorboat or vessel for a violation of sections 2 through 15, or for a violation of section 20.1-13-07.
  - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a motorboat or vessel for a violation of sections 2 through 15, or for a violation of section 20.1-13-07.
  - c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a motorboat or vessel under sections 2 through 15, or for a violation of section 20.1-13-07, and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a motorboat or vessel under this section if:
- a. No administrative hearing request is made under section 9;
  - b. The person mails an affidavit to the commissioner within ten days after the game warden or law enforcement officer issues the statement of intent. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;
    - (2) Agrees that the person may not operate a motorboat or vessel for the appropriate period;
    - (3) Acknowledges the right to a section 9 administrative hearing and section 10 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person may not operate a motorboat or vessel for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent, or the court does not accept the guilty plea, or the guilty plea is withdrawn;

- c. The person pleads guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the game warden or law enforcement officer issues the statement of intent; and
  - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the end of the prohibition from operating a motorboat or vessel.
3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-13-07 to the commissioner within ten days after it is ordered. Upon receipt of the order, the commissioner immediately shall prohibit the person from operating a motorboat or vessel as provided under this section without providing an administrative hearing.

SECTION 8. Administrative sanction for operating motorboat or vessel while having certain drug concentrations. After the receipt of the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 9, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had probable cause to arrest the person and chemical test results show that the arrested person was operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after operating a motorboat or vessel, the commissioner shall prohibit the person from operating any motorboat or vessel in this state as follows:

1. For ninety-one days if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-13-07 or the person has not been prohibited from operating a motorboat or vessel under sections 2 through 15.
2. For three hundred sixty-four days if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-13-07 or the person has once been prohibited from operating a motorboat or vessel under sections 2 through 15.
3. For two years if the person's record shows that within the five years preceding the date of the arrest, the person has twice been prohibited from operating a motorboat or vessel under sections 2 through 15, or for a violation of section 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least two separate arrests.

SECTION 9. Administrative hearing on request.

1. Before prohibiting a person from operating a motorboat or vessel under section 7 or 8, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ten days after the date the game warden or law enforcement officer issued a statement of intent to prohibit the person from operating a motorboat or vessel. The hearing must be held within twenty-five days after the date of issuance of the statement of intent, but the hearing officer may extend the hearing to within thirty-five days after the issuance of the statement of intent if good cause is shown.
2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 2 or 5 and, if applicable, section 4; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the office of the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for refusing to submit to a chemical test under section 2, the hearing must be before a hearing officer assigned by the commissioner at a time and place designated by the commissioner. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 2 may cover only the issues of whether a game warden or law enforcement officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; and whether that person refused to submit to the chemical test.
4. At a hearing under this section, the regularly kept records of the commissioner may be introduced. Those records establish prima facie their contents without further foundation. For purposes of sections 2 through 15, any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the commissioner from the office of the state toxicologist or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the commissioner from a certified breath test operator, and any copy of a certified copy of

a certificate of the office of the state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the commissioner from the office of the state toxicologist or the clerk of district court, are regularly kept records of the commissioner.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the commissioner's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on prohibition of the person from operating a motorboat or vessel will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the commissioner, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the commissioner's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state for the appropriate period. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 10.

**SECTION 10. Judicial review.** Any person who has been prohibited from operating a motorboat or vessel by the decision of the hearing officer under section 9 may appeal within seven days after the date of the hearing under section 9 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-15, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the



commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 11. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a motorboat or vessel is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.
2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk of the district court in each county and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.
6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the office of the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under sections 2 through 15.
7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.
8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

**SECTION 12. Proof of refusal admissible in any action or proceeding.** If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof.

**SECTION 13. Effect of evidence of chemical test.** Sections 2 through 15 do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

**SECTION 14. Liability.** Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

**SECTION 15. Operation of motorboat or vessel during period of prohibition - Penalty.** Any person who operates a motorboat or vessel on the waters of this state during the period the person is prohibited from operating a motorboat or vessel under sections 2 through 15 is guilty of a class A misdemeanor.

Approved April 16, 1991  
Filed April 18, 1991

# GOVERNMENTAL FINANCE

## CHAPTER 255

SENATE BILL NO. 2449  
(Senator Lindgren)  
(Representative Larson)

### VALIDATION OF BONDS

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to validation of bonds issued by public bodies of the state prior to July 1, 1991.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1989~~ 1991.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 256

SENATE BILL NO. 2240  
(Committee on State and Federal Government)  
(At the request of the State Investment Board)

### STATE INVESTMENT BOARD PROCEDURES

AN ACT to amend and reenact section 21-10-02 of the North Dakota Century Code as amended by section 5 of chapter 667 of the 1989 Session Laws of North Dakota, and sections 21-10-04, 21-10-05, 21-10-06.1, and 21-10-08 of the North Dakota Century Code, relating to state investment board powers and duties, meetings, investment director, funds under management, investment reports, and reserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-10-02 of the North Dakota Century Code as amended by section 5 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

21-10-02. Board - Powers and duties. The board shall be charged with the investment of the funds enumerated in section 21-10-06. It shall approve general types of securities for investment by these funds and set policies and procedures regulating securities transactions on behalf of the various funds. Representatives of the funds enumerated in section 21-10-06 may make recommendations to the board in regard to investments. The board or its designated agents shall be custodian of securities purchased on behalf of funds under the management of the board. The board may appoint an investment director or advisory service, or both, who must be experienced in, and hold considerable knowledge of, the field of investments. The investment director or advisory service shall serve at the pleasure of the board. The investment director or advisory service may be an individual, corporation, partnership, or any legal entity which meets the qualifications established herein. The board may appoint, in addition to an investment director or advisory service, such personnel as it deems necessary to properly fulfill their responsibility. ~~Existing department facilities for making traditional investments within the state shall continue to function subject however to supervision and management of the board.~~ The board may authorize the investment director to lend securities held by the funds. These securities must be collateralized as directed by the board. The board may create investment fund pools in which the funds identified in section 21-10-06 may invest.

SECTION 2. AMENDMENT. Section 21-10-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-04. Board - Meetings. The state investment board shall select one of its members to serve as ~~chairman~~ chair, ~~one to serve as vice chair~~, and shall meet at the call of the ~~chairman~~ chair, ~~investment director~~, or upon written notice signed by two members of the board. ~~Such meetings must be held not less than eight times per year.~~

SECTION 3. AMENDMENT. Section 21-10-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-05. ~~Director~~ Investment director - Powers and duties. Subject to the limitations contained in the law or the policymaking regulations or resolutions promulgated by the board, the investment director shall have the power to make purchases, sales, exchanges, investments, and reinvestments of the funds under the management of the board. This section shall constitute a continuing appropriation of all moneys required for the making of investments of funds under the management of the board. The investment director shall see that moneys invested are at all times handled in the best interests of the funds. Securities or investments may be sold or exchanged for other securities or investments.

The investment director shall formulate and recommend to the investment board for approval, investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions, and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale, or exchange transactions which should govern the investment of funds under this chapter.

SECTION 4. AMENDMENT. Section 21-10-06.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-06.1. Board - Investment reports. The board shall annually prepare reports on the investment performance of each fund under its control. The reports must be uniform and must include:

1. A list of the advisory services managing investments for the board.
2. A list of investments ~~including the cost and~~ at market value, compared to previous reporting period, of each fund managed by each advisory service.
3. Earnings, percentage earned, and change in market value of each fund's investments.
4. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to generally accepted market indicators. ~~The market indicators to be used are the Standard and Poor's 500; Dow Jones Industrials; New York Stock Exchange; Salomon Bond Index; Lehman Kuhn Loeb Government/Corporation; and treasury bills.~~

SECTION 5. AMENDMENT. Section 21-10-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-08. Reserves - Percentage limitations. In order to meet claims and liabilities, reserves must be established and maintained in each of the funds in accordance with ~~recommendations of the authorized fiduciaries thereof consisting of cash; Bank of North Dakota certificates of deposit; or short-term United States Government securities in amounts between one percent and ten percent of the assets of each fund~~ the investment policy and asset allocation established for each fund.

~~The board may authorize temporary deviations from the amounts of such reserves in its sound discretion.~~

Approved April 3, 1991  
Filed April 4, 1991

# HEALTH AND SAFETY

## CHAPTER 257

HOUSE BILL NO. 1112  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health  
and Consolidated Laboratories)

### HEALTH COUNCIL MEMBERS

AN ACT to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to health council membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 23-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of fifteen ~~seventeen~~ members appointed by the governor in the following manner: Two persons ~~shall be appointed~~ from a list of four submitted by the state hospital association, two persons shall be appointed one of whom must represent a rural hospital and one of whom must represent an urban hospital, ~~one person from a list of four~~ two submitted by the state medical association, one person from a list of two submitted by the state long term care association, one person shall be appointed from a list of two submitted by the state dental association, one person shall be appointed from a list of two submitted by the state optometric association, one person shall be appointed from a list of two submitted by the state nurses association, one person shall be appointed from a list of two submitted by the state pharmaceutical association, and there shall be appointed seven ~~nine~~ persons who are consumers of health care services and not employed in the health care field to the health council. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. For the purposes of this section, a rural hospital is a hospital located in a city with a population of less than twenty thousand, and an urban hospital is a hospital located in a city with a population of twenty thousand or more. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council ~~shall~~ must be elected annually. The following persons shall ~~Any state agency may serve~~ in an advisory capacity to the health council: ~~the state health officer; the attorney general; the director of institutions; the state fire marshal; the executive secretary of the state board of nursing; the executive director of the department of human services; the executive director of the North Dakota Indian affairs commission; and any other persons the governor may designate at the discretion of the council.~~ The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as

\* NOTE: Section 23-01-02 was also amended by section 4 of Senate Bill No. 2245, chapter 592.

standing committees a health committee and a hospital committee and any other committees the council may find necessary. The health committee consists of one of the representatives of the state medical association; one of the representatives of the state hospital association; the representative of the state dental association; the representative of the state optometric association; the representative of the state nurses association; and two of the health care consumer members. The hospital committee consists of the representatives of the state hospital association; one of the representatives of the state medical association; the representative of the state nurses association; and two of the health care consumer members. The members of these committees shall must be selected by the chairman of the health council from its own membership. The chairman shall have the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. The per diem and expenses shall must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 258

HOUSE BILL NO. 1312  
(Representatives D. Olsen, Jensen, Scherber)  
(Senators Nalewaja, Krebsbach)

### VACCINE CHARGES BY HEALTH DEPARTMENT

AN ACT to amend and reenact section 23-01-04.2 of the North Dakota Century Code, relating to the regulation of vaccine charges by the department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-04.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-04.2. Legislative intent - Health vaccination charges. It is the intent of the legislative assembly that the department of health and consolidated laboratories adopt rules ~~limiting the charges by private clinics and hospitals for providing vaccinations, with vaccine obtained at no cost from the department, to one half of the cost incurred by the department in purchasing the vaccine~~ defining appropriate administration charges for vaccine provided by the department to physicians, private clinics, and hospitals.

Approved March 7, 1991  
Filed March 7, 1991



## CHAPTER 259

HOUSE BILL NO. 1590  
(Representatives Thompson, Laughlin)  
(Senators Mushik, Traynor)

### **ALTERNATIVE HEALTH CARE PROJECTS**

AN ACT relating to the establishment of alternative health care services pilot projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Alternative health care services pilot project - Application. At any time that the health care needs of a city, township, or other geographic area are not being adequately met, any person may apply to the state health council for approval to conduct an alternative health care services pilot project. The application must address the need for and benefits of the pilot project. It must also contain a detailed description of the nature and scope of the project, quality control, organization, accountability, responsibility, and financial feasibility.

SECTION 2. Notice - Hearing. Upon receipt of an application under section 1 of this Act, the state health council shall schedule a public hearing, send notice to all interested parties, and give public notice of the hearing by publication in the official newspaper of each county in the pilot project area. At the hearing, the council shall accept written and oral testimony. The council shall review the application and all testimony presented at the hearing and approve, disapprove, or modify and approve the application based on criteria established by the council. The criteria must address the availability and use of health personnel, facilities, and services.

SECTION 3. Approval of pilot project - Duration. Notwithstanding any other provisions of law, upon approval of an application submitted under section 1 of this Act, the state health council, in consultation with the state health officer and any other public or private entity consulted by the state health council, shall set the standards for the delivery of health care services by the pilot project. The standards may not adversely affect the state's participation in federal medicare and medicaid programs. No more than three separate projects may be operational at any time and no project may be operational for longer than five years.

SECTION 4. Report to the fifty-third legislative assembly. The state health council shall monitor all ongoing alternative health care services pilot projects to assess the need for statutory and regulatory changes and shall report its findings to the fifty-third legislative assembly.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 260

HOUSE BILL NO. 1499  
(Representatives Mutzenberger, D. Olsen, Kolbo)  
(Senators Lips, Mathern)

### TRANSPLANT TRUST FUND

AN ACT to provide for an organ or tissue transplant trust fund to be administered by a private nonprofit organization for the purpose of providing financial assistance to transplant patients; to amend and reenact subsection 1 of section 57-38-35.1 of the North Dakota Century Code, relating to disposition of certain revenues not refunded to income taxpayers; to provide a standing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Organ or tissue transplant assistance administration - Standing appropriation. The state health officer shall select a private nonprofit patient-oriented organization incorporated in this state for the purpose of administering financial assistance to organ or tissue transplant patients who are residents of this state. The state health officer shall adopt rules governing administration of this section. The organization selected shall administer and provide grants from available funds to alleviate demonstrated financial needs of transplant patients for any costs associated with transplant operations, under guidelines based on current social service eligibility requirements. There is hereby created as a special fund in the state treasury an organ transplant support fund, the principal and income of which is hereby appropriated to the organization selected under this section. The organization administering the fund may solicit contributions from private or governmental sources and such contributions may be deposited in the fund.

SECTION 2. AMENDMENT. Subsection 1 of section 57-38-35.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No refunds may be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. Notwithstanding the provisions of section 57-38-55, the tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the organ transplant support fund.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 261

HOUSE BILL NO. 1129  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### FEDERAL FUND QUALIFICATION COMPLIANCE RULES

AN ACT to amend and reenact section 23-01-11 of the North Dakota Century Code, relating to acceptance of funds by the department of health and consolidated laboratories and authorization to qualify for benefits under federal laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-11 of the North Dakota Century Code is amended and reenacted as follows:

23-01-11. Acceptance of funds and right to qualify for benefits under federal laws authorized. The state department of health and consolidated laboratories may:

1. Accept funds from cities, counties, the federal government, private organizations, and individuals for infancy and maternal hygiene, for other public health work and for the purpose of conducting a survey of existing medical hospitals and related institutions, planning of needed hospital construction and for construction and maintenance of such medical hospitals and related institutions. When approved by the governor of this state, the state department of health and consolidated laboratories may match the same from any unexpended portion of its appropriation in accordance with specifications agreed to or required by congressional act. All infancy and maternal hygiene and public health work ~~shall~~ must be done under the supervision of the state department of health and consolidated laboratories.
2. Do any and all things that may be Adopt rules necessary in order to enable the state of North Dakota to receive the full benefit of be in compliance with any federal laws now in force for the construction, equipping and maintenance of in order to qualify for any federal funds related to medical hospitals and related institutions facilities or agencies licensed by the state department of health and consolidated laboratories.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 262

SENATE BILL NO. 2589  
(Senators Mushik, Ingstad)  
(Representatives Dorso, Stofferahn)  
(Approved by the Committee on Delayed Bills)

### PHYSICIAN FEE INFORMATION

AN ACT to create and enact a new section to chapter 23-01.1 and a new subsection to section 23-01.1-02 of the North Dakota Century Code, relating to publication of physicians' fee information; to amend and reenact section 23-01.1-04 of the North Dakota Century Code, relating to data acquired by the health care data committee; and to repeal section 23-01.1-03 of the North Dakota Century Code, relating to a directory of licensed physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Publication of comparative physician fee information. The health care data committee shall create a data collection, retention, processing, and reporting system that will allow the distribution of information comparing the average fees charged by each licensed physician practicing medicine in this state. Insurers, nonprofit health service corporations, health maintenance organizations, and state agencies shall provide the data and information. The committee shall prepare a report which must include a schedule of average fees charged for services representative of the physician's type of practice and specialization and other information that the data committee may determine are necessary for consumers to use in comparing total physician costs and to assist policymakers or providers in their deliberations on future health care decisions.

SECTION 2. A new subsection to section 23-01.1-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Prepare and distribute a report comparing physicians' average charges for selected services to include all physicians licensed to practice medicine in this state and determined by the health care data committee to be actively providing direct patient care services in this state.

SECTION 3. AMENDMENT. Section 23-01.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01.1-04. Administrative authority of health care data committee - Administrative support - Authority to acquire data. The health care data committee may adopt rules consistent with and necessary for the implementation of this chapter. The committee shall establish working

arrangements among other state agencies for the assurance of patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data to the public and to the state agencies in making more cost-effective health care purchasing decisions. The committee may require insurers, nonprofit health service corporations, health maintenance organizations, and state agencies to provide data regarding hospital, physician, and other provider charges, and reimbursement and volume data as required for the performance of the duties of the committee under this chapter.

SECTION 4. REPEAL. Section 23-01.1-03 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 263

HOUSE BILL NO. 1197  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### **BLOOD TESTING AND PLASMA**

AN ACT to repeal sections 23-01-13, 23-07-07.1, 23-07-07.2, 23-07-07.3, and 23-07-07.4 of the North Dakota Century Code, relating to the submission of blood samples of pregnant women for a serological test for syphilis and the state department of health and consolidated laboratories obtaining, storing, and distributing blood plasma.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 23-01-13, 23-07-07.1, 23-07-07.2, 23-07-07.3, and 23-07-07.4 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 264

SENATE BILL NO. 2155  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### NOISE

AN ACT to repeal section 23-01-17 of the North Dakota Century Code, relating to noise being harmful to health and safety, the power to regulate, and hearings, appeals, penalties, and injunctions concerning noise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-17 of the North Dakota Century Code is repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 265

HOUSE BILL NO. 1310  
(Representatives D. Olsen, Larson, Skjerven)  
(Senators Nalewaja, Krebsbach)

### LIFE-PROLONGING TREATMENT

AN ACT to create and enact a new subsection to section 23-06.4-11 of the North Dakota Century Code, relating to declarations governing the use, withholding, or withdrawal of life-prolonging treatment; and to amend and reenact subsection 4 of section 23-06.4-02 and sections 23-06.4-03 and 23-06.4-04 of the North Dakota Century Code, relating to declarations governing the use, withholding, or withdrawal of life-prolonging treatment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-06.4-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Life-prolonging treatment" means any medical procedure, treatment, or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying and where, in the judgment of the attending physician, death will occur whether or not the treatment is utilized. The term does not include the provision of appropriate nutrition and hydration or the performance of any medical procedure necessary to provide comfort, care, or alleviate pain; or medical procedures, treatment, or intervention performed in an emergency, prehospital situation.

SECTION 2. AMENDMENT. Section 23-06.4-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-03. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:
  - a. Related to the declarant by blood or marriage;
  - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will, existing by operation of law or otherwise, at the time of the declaration;
  - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;



- d. Directly financially responsible for the declarant's medical care;
  - e. Attending physicians of the declarant.
2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a regional long term care ombudsman as provided in section 50-10.1-02 recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located.
  3. A declaration must be substantially in the form set forth in subdivision a or b, as applicable, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.
    - a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:

Declaration made this ---- day of ----- (month, year).

I, -----, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.
3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
4. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
5. I understand that I may revoke this declaration at any time.

Signed -----  
 City, County, and State of Residence -----  
 The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness -----  
 Witness -----

- b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:

Declaration made this ----- day of ----- (month, year).  
 I, -----, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.
3. I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.
4. I understand that I may revoke this declaration at any time.

Signed -----  
 City, County, and State of Residence -----  
 The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness -----  
 Witness -----

- 4. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical

record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 3. AMENDMENT. Section 23-06.4-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-04. When declaration operative. A declaration becomes operative when it is communicated to the attending physician, and the declarant is determined by the attending physician and another physician to be in a terminal condition and no longer able to make decisions regarding administration of life-prolonging treatment. A declaration made under section 23-06.4-03 does not obligate the physician to use, withhold, or withdraw life-prolonging treatment but is presumptive evidence of the declarant's desires concerning the use, withholding, or withdrawal of such treatment and must be given great weight by the physician in determining the intent of the incompetent declarant. A declaration made under section 23-06.4-03 does not apply to emergency treatment performed in a prehospital situation.

SECTION 4. A new subsection to section 23-06.4-11 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Declarations made under section 23-06.4-03 do not apply to emergency treatment performed in a prehospital situation.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 266

HOUSE BILL NO. 1384  
(Representatives DeMers, Kolbo, Rydell)  
(Senators Mushik, Redlin, Stenehjelm)

### HEALTH CARE POWER OF ATTORNEY

AN ACT to provide for durable powers of attorney for health care; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of purpose. The purpose of this Act is to enable adults to retain control over their own medical care during periods of incapacity through the prior designation of an individual to make health care decisions on their behalf. This Act does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

SECTION 2. Definitions. In this Act, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.
2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.
4. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter.
5. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.
6. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
7. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.

8. "Principal" means an adult who is a resident of this state and who has executed a durable power of attorney for health care.

#### SECTION 3. Scope and duration of authority.

1. Subject to the provisions of this Act and any express limitations set forth by the principal in the durable power of attorney for health care, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.
2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
  - a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the durable power of attorney for health care or in declaration executed pursuant to chapter 23-06.4; or
  - b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests.
3. Under a durable power of attorney for health care, the agent's authority is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician and filed in the principal's medical record.
4. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
5. Nothing in this Act permits an agent to consent to admission to a mental health facility, state institution, or security unit of a long-term care facility for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

SECTION 4. Restrictions on who can act as agent. A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;
3. The principal's long-term care services provider; or
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

SECTION 5. Execution and witnesses. The durable power of attorney for health care must be signed by the principal in the presence of at least two or more subscribing witnesses, neither of whom may, at the time of execution, be the agent, the principal's health or long-term care services provider or

the provider's employee, the principal's spouse or heir, a person related to the principal by blood or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, or any other person who has, at the time of execution, any claims against the estate of the principal. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that the principal was aware of the nature of the documents and signed it freely and voluntarily. If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

**SECTION 6. Acceptance of appointment - Withdrawal.** To be effective, the agent must accept the appointment in writing. Subject to the right of the agent to withdraw, the acceptance creates a duty for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapable. Until the principal becomes incapable, the agent may withdraw by giving notice to the principal. After the principal becomes incapable, the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

**SECTION 7. Revocation.**

1. A durable power of attorney for health care is revoked:
  - a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the power;
  - b. By execution by the principal of a subsequent durable power of attorney for health care; or
  - c. By the divorce of the principal and spouse, where the spouse is the principal's agent.
2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and notify the agent, the attending physician, and staff responsible for the principal's care of the revocation.

**SECTION 8. Inspection and disclosure of medical information.** Subject to any limitations set forth in the durable power of attorney for health care by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information;

3. Consent to the disclosure of such medical information.

#### SECTION 9. Action by provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's durable power of attorney for health care, are bound to follow the directives of the principal's designated agent to the extent they are consistent with this Act and the durable power of attorney for health care.
2. If because of a moral or other conflict with a specific directive given by the agent, a principal's health care or long-term care services provider finds it impossible to follow that directive, the provider has the duty to inform the agent and if possible the principal, and take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's directive.

#### SECTION 10. Freedom from influence.

1. A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a durable power of attorney for health care as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a durable power of attorney for health care.
2. A durable power of attorney for health care is not effective if, at the time of execution, the principal is a resident of a long-term care facility unless a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may be designated by the department of human services or the county court for the county in which the facility is located, signs a statement affirming that the person has explained the nature and effect of the durable power of attorney for health care to the principal. It is the intent of this subsection to recognize that some residents of long-term care facilities are insulated from a voluntary decision-making role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willingly and voluntarily executing a durable power of attorney for health care.
3. A durable power of attorney for health care is not effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital unless a person designated by the hospital signs a statement that the person has explained the nature and effect of the durable power of attorney for health care to the principal.

SECTION 11. Reciprocity. This chapter does not limit the enforceability of a durable power of attorney for health care or similar

instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

**SECTION 12. Immunity.**

1. A person acting as agent pursuant to a durable power of attorney for health care may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the terms of the durable power of attorney for health care and the provisions of this Act.
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of the durable power of attorney for health care, the directives of the patient's agent and the provisions of this Act.

**SECTION 13. Guardianship authority - Conflicting declaration.**

1. Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to this Act takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
2. To the extent a durable power of attorney for health care conflicts with a declaration executed in accordance with chapter 23-06.4, the instrument executed later in time controls.

**SECTION 14. Liability for health care costs.** Liability for the cost of health care provided pursuant to the agent's decision is the same as if the health care were provided pursuant to the principal's decision.

**SECTION 15. Validity of previously executed durable powers of attorney.** This Act does not affect the validity or enforceability of durable powers of attorney pertaining to health care executed before the effective date of this Act.

**SECTION 16. Use of statutory form.** The statutory form of durable power of attorney described in section 17 of this Act may be used and is the preferred form by which a person may execute a durable power of attorney for health care pursuant to this Act. It is known as "the statutory form of durable power of attorney for health care".

**SECTION 17. Statutory form of durable power of attorney.** The statutory form of durable power of attorney is as follows:

STATUTORY FORM DURABLE POWER OF ATTORNEY FOR  
HEALTH CARE  
WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document which is authorized by the general laws of this state. Before executing this document, you should know these important facts:



You must be at least eighteen years of age and a resident of the state of North Dakota for this document to be legally valid and binding.

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision.

This document gives your agent authority to request, consent to, refuse to consent to, or to withdraw consent for any care, treatment, service, or procedure to maintain, diagnose, or treat a physical or mental condition if you are unable to do so yourself. This power is subject to any statement of your desires and any limitation that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent authorizes anything that is illegal; acts contrary to your known desires; or where your desires are not known, does anything that is clearly contrary to your best interest.

Unless you specify a specific period, this power will exist until you revoke it. Your agent's power and authority ceases upon your death.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital, or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

This document revokes any prior durable power of attorney for health care.

You should carefully read and follow the witnessing procedure described at the end of this form. This document will not be valid unless you comply with the witnessing procedure.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

Your agent may need this document immediately in case of an emergency that requires a decision concerning your health care. Either keep this document where it is immediately available to your agent and alternate agents, if any, or give each of them an executed copy of this document. You should give your doctor an executed copy of this document.

1. DESIGNATION OF HEALTH CARE AGENT. I, \_\_\_\_\_

(insert your name and address)

do hereby designate and appoint: \_\_\_\_\_

(insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of an operator of a long-term care facility.) as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care.
3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations", below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS. (Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below. If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

- a. Statement of desires concerning life-prolonging care, treatment, services, and procedures:

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- b. Additional statement of desires, special provisions, and limitations regarding health care decisions:

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(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.) If you wish to make a gift of any bodily organ you may do so pursuant to North Dakota Century Code chapter 23-06.2, the Uniform Anatomical Gift Act.

- 5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

- a. Request, review, and receive any information, verbal or written, regarding my physical or mental health, including medical and hospital records.
- b. Execute on my behalf any releases or other documents that may be required in order to obtain this information.
- c. Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4, "Statement of Desires, Special Provisions, and Limitations", above.)

- 6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

- a. Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."
- b. Any necessary waiver or release from liability required by a hospital or physician.

- 7. DURATION. (Unless you specify a shorter period in the space below, this power of attorney will exist until it is revoked.)

This durable power of attorney for health care expires on

(Fill in this space ONLY if you want the authority of your agent to end on a specific date.)

- 8. DESIGNATION OF ALTERNATE AGENTS. (You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved. Your agent may withdraw whether or not you are capable of designating another agent.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

a. First Alternate Agent: \_\_\_\_\_

\_\_\_\_\_  
(Insert name, address, and telephone number of first alternate agent.)

b. Second Alternate Agent: \_\_\_\_\_

\_\_\_\_\_  
(Insert name, address, and telephone number of second alternate agent.)

- 9. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

DATE AND SIGNATURE OF PRINCIPAL  
(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney  
For Health Care on \_\_\_\_\_ at \_\_\_\_\_  
(date) (city) (state)

\_\_\_\_\_  
(you sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO (2) QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

STATEMENT OF WITNESSES

This document must be witnessed by two (2) qualified adult witnesses. None of the following may be used as a witness:

1. A person you designate as your agent or alternate agent;
2. A health care provider;
3. An employee of a health care provider;
4. The operator of a long-term care facility;
5. An employee of an operator of a long-term care facility;
6. Your spouse;
7. A person related to you by blood or adoption;
8. A person entitled to inherit any part of your estate upon your death; or
9. A person who has, at the time of executing this document, any claim against your estate.

I declare under penalty of perjury that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider; an employee of a health care provider; the operator of a long-term care facility; an employee of an operator of a long-term care facility; the principal's spouse; a person related to the spouse by blood or adoption; a person entitled to inherit any part of the principal's estate upon death; nor a person who has, at the time of executing this document, any claim against the principal's estate.

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

Residence Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Residence Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

10. ACCEPTANCE OF APPOINTMENT OF POWER OF ATTORNEY. I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapable. I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this power of attorney at any time in any manner.

If I choose to withdraw during the time the principal is competent I must notify the principal of my decision. If I choose to

withdraw when the principal is incapable of making the principal's health care decisions, I must notify the principal's physician.

\_\_\_\_\_  
(Signature of agent/date)

\_\_\_\_\_  
(Signature of alternate agent/date)

SECTION 18. Penalties.

1. A person who, without authorization of the principal, willfully alters or forges a power of attorney or willfully conceals or destroys a revocation with the intent and effect of causing a withholding or withdrawal of life sustaining procedures which hastens the death of the principal is guilty of a class C felony.
2. A person who, without authorization of the principal, willfully alters, forges, conceals, or destroys a power of attorney or willfully alters or forges a revocation of a power of attorney is guilty of a class A misdemeanor.
3. The penalties provided in this section do not preclude application of any other penalties provided by law.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 267

SENATE BILL NO. 2156  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### REPORTABLE DISEASES OR CONDITIONS

AN ACT to amend and reenact section 23-07-01 of the North Dakota Century Code, relating to human diseases or conditions that must be reported.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-01. Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories shall designate the diseases or conditions that must be reported ~~as prescribed in this chapter, and it may classify such diseases as contagious or infectious, sexually transmitted, and dangerous. Such diseases or conditions may include contagious, infectious, sexually transmitted, or chronic diseases or any illness or injury which may have a significant impact on public health.~~

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 268

SENATE BILL NO. 2157  
 (Committee on Human Services and Veterans Affairs)  
 (At the request of the State Department of Health and  
 Consolidated Laboratories)

### AIDS TESTING ELIMINATED

AN ACT to amend and reenact section 23-07-07 of the North Dakota Century Code, relating to a requirement that individuals infected with a sexually transmitted disease be tested for antibodies or antigens of the human immunodeficiency virus.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-07. Sexually transmitted diseases - Additional powers and duties of health officers. The state health officer, and each district, county, and city health officer within the officer's jurisdiction, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.
2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
- ~~3. Require any person infected with a sexually transmitted disease to be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus. The state health officer shall designate sexually transmitted diseases for which contact tracing is appropriate. If contact tracing is appropriate, the attending physician, or health officer if authorized by the attending physician, shall notify the following individuals regarding possible exposure to contagious disease:~~
  - ~~a. Known sexual partners of an individual infected with a sexually transmitted disease.~~
  - ~~b. Individuals who either have been, or may be, exposed to an individual infected with a sexually transmitted disease in a manner that creates an epidemiologically demonstrated risk of transmission.~~
- ~~4.~~ 3. Investigate sources of infection of sexually transmitted diseases.



- 5- 4. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 269

SENATE BILL NO. 2160  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### AIDS TESTING

AN ACT to amend and reenact sections 23-07.5-02, 23-07.5-03, 23-07.5-04 and subdivision a of subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to consent for human immunodeficiency virus testing and confidentiality of test results.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.5-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing or disclosure - Exception.

1. Except when testing and disclosure is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of an antibody to the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing or disclosure as provided under subsection 2.
2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the ~~potential test subject's~~ appropriate individual's signature on the form. The form must contain:
  - a. The name of the potential test subject who is giving consent and whose test results may be disclosed and, where appropriate, the name of the individual providing consent on behalf of the potential test subject.
  - b. A statement of explanation ~~to the potential test subject~~ that the test results may be disclosed as provided under subsection 1 of section 23-07.5-05 and either a listing of the persons or circumstances specified under subsection 1 of section 23-07.5-05 or a statement that the listing is available upon request.

- c. Spaces specifically designated for the following purposes:
- (1) The signature of the potential test subject person providing informed consent for the testing and the date on which the consent is signed; and
  - (2) The name of a any person to whom the potential test subject authorizes that disclosure of test results may be made disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

SECTION 2. AMENDMENT. Section 23-07.5-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.5-03. Written consent to disclosure. An individual who is tested for the presence of an antibody to the human immunodeficiency virus, that individual's parent or legal guardian or custodian in the case of a minor, or that individual's legal guardian in the case of an incapacitated individual, may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the test results to any person at any time after providing informed consent for disclosure. A record of this consent must be maintained by the health care provider, blood bank, blood center, or plasma center authorized to disclose test results.

SECTION 3. AMENDMENT. Section 23-07.5-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject, the subject's parent or legal guardian or custodian if the subject is a minor or the subject's legal guardian if the subject is incapacitated, informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 23-07.5-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The subject of the test, in the case of a minor the parent or legal guardian or custodian of the subject of the test, in the case of an incapacitated person the legal guardian of the subject of the test. In the event the subject of a test is placed in a foster home, or is to be adopted, the parent, legal guardian or custodian, as the case may be, may disclose the results of the test to the foster parents or potential adoptive parents.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 270

HOUSE BILL NO. 1045  
(Legislative Council)  
(Interim Jobs Development Commission)

### BED AND BREAKFAST FACILITIES

AN ACT to amend and reenact subsection 1 of section 23-09.1-01 and section 23-09.1-02 of the North Dakota Century Code, relating to the definition of a bed and breakfast facility and rules adopted by the state department of health and consolidated laboratories regulating bed and breakfast facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-09.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Bed and breakfast facility" means a private home ~~which~~ that is used to provide accommodations for a charge to the public, with ~~at most two not more than four~~ lodging units ~~for up to eight persons per night and,~~ in which no more than two family style meals per day are provided.

SECTION 2. AMENDMENT. Section 23-09.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.1-02. Bed and breakfast facilities - Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories, ~~prior to January 1, 1986,~~ shall establish by rule the procedures for licensing, qualifying, classifying, inspecting, and regulating persons providing bed and breakfast facilities in private homes, including rules affecting the health and safety of the facility and the persons using the facility. No political subdivision, including a home rule city or county, may impose health and safety, licensure, or inspection requirements that exceed the requirements of this chapter or rules adopted by the department of health and consolidated laboratories.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 271

SENATE BILL NO. 2588

(Nething, Marks)

(Approved by the Committee on Delayed Bills)

### CARE FACILITIES FOR AUTISTIC PERSONS

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to residential care facilities for autistic persons; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter unless the context otherwise requires:

1. "Autism" means a brain disorder that may prevent understanding of what a person sees, hears, or otherwise senses and is conceptualized as a behavioral syndrome with multiple biological manifestations.
2. "Autistic-like" means exhibiting one or more of the characteristics of autism.
3. "Department" means the department of health and consolidated laboratories.
4. "Residential care facility for children with autism or autistic-like characteristics" means a living facility providing twenty-four hour assistance for five or more children not related by blood or marriage to the operator through a multidisciplinary approach including a medical diagnosis of autism or autistic-like characteristics.
5. "Residential care giver" means an individual who routinely provides assistance with activities of daily living or direct care services in implementing the treatment plan, behavior management, or education to residents in a residential care facility for children with autism or autistic-like characteristics.

Department to establish standards - Licensing - Inspection. The department shall establish standards for the licensure of residential care facilities for children with autism or autistic-like characteristics, regularly inspect the facilities, and grant annual licenses to the facilities that meet the established standards. Upon the request of the department, the state fire marshal shall inspect any facility seeking licensure, or any licensed facility, and shall report the inspection results to the department.

**License required - Term - Revocation.** No person may operate or manage a residential care facility for children with autism or autistic-like characteristics unless the facility has been licensed by the department. The license must state the name of the owner or manager of the facility, its location, and the maximum number of persons who may reside in the facility at any time. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

**Method of providing service.** A residential care facility for children with autism or autistic-like characteristics must be specifically designed, arranged, and staffed to provide twenty-four hour assistance with activities of daily living in a home-like environment in response to the individual needs of the residents. A residential care facility for children with autism or autistic-like characteristics must provide or make arrangements for diagnostic and treatment services, behavioral management, and educational services to enable residents to attain or maintain their highest practicable level of functioning.

**Records.** The owner or manager of a residential care facility for children with autism or autistic-like characteristics must keep a record of every individual admitted to the facility, in the manner and form prescribed by the department.

**Violations - Injunction.** The department shall prosecute all violations of this chapter. The department may apply to the district court of the county in which the residential care facility for children with autism or autistic-like characteristics is located, for a temporary or permanent injunction restraining any person from conducting, managing, or operating a facility without a license as required by this chapter.

**Authority to adopt rules.** The department may adopt rules necessary to carry out its responsibilities under this chapter.

**Penalty.**

1. Any person who operates or manages a residential care facility for children with autism or autistic-like characteristics without first obtaining a license as required by this chapter is guilty of a class B misdemeanor.
2. Any person who violates any provision of this chapter or any rule adopted under this chapter may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues, plus interest and any costs incurred by the department to enforce this penalty. The civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by rules adopted under this chapter.

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

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 272

HOUSE BILL NO. 1296  
(Representatives DeMers, Trautman, Gilmore)  
(Senator Mathern)

### CONSENT FOR HEALTH CARE ON ANOTHER'S BEHALF

AN ACT to provide for informed consent to health care on behalf of an incapacitated person by certain classes of persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Persons authorized to provide informed consent to health care for incapacitated persons - Priority.

1. Informed consent for health care for a minor patient or a patient who is determined by a physician to be an incapacitated person, as defined in subsection 2 of section 30.1-26-01, and unable to consent may be obtained from a person authorized to consent on behalf of the patient. Persons in the following classes and in the following order of priority are authorized to provide informed consent to health care on behalf of the patient:
  - a. The appointed guardian or custodian of the patient, if any;
  - b. The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
  - c. The patient's spouse;
  - d. Children of the patient who are at least eighteen years of age;
  - e. Parents of the patient, including a stepparent who has maintained significant contacts with the incapacitated person;
  - f. Adult brothers and sisters of the patient who have maintained significant contacts with the incapacitated person;
  - g. Grandparents of the patient;
  - h. Grandchildren of the patient who are at least eighteen years of age and who have maintained significant contacts with the incapacitated person; or
  - i. A close relative or friend of the patient who has maintained significant contacts with the incapacitated person.
2. A physician seeking informed consent for proposed health care for a minor patient or a patient who is an incapacitated person and is unable to consent must make reasonable efforts to locate and secure

authorization for the health care from a competent person in the first or succeeding class identified in subsection 1. If the physician is unable to locate such person, authorization may be given by any person in the next class in the order of descending priority. A person identified in subsection 1 may not provide informed consent to health care if a person of higher priority has refused to give such authorization.

3. Before any person authorized to provide informed consent pursuant to this section exercises that authority, the person must first determine in good faith that the patient, if not incapacitated, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.
4. No person authorized to provide informed consent pursuant to this section may provide consent for sterilization, abortion, or psychosurgery; or for admission to a state mental health facility or a secured unit of a long-term care facility for a period of more than forty-five days without a mental health proceeding or other court order.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 273

SENATE BILL NO. 2517  
(Mutch)**SELF-SERVICE FUEL DISPENSERS**

AN ACT to amend and reenact subsection 2 of section 23-13-02.3 of the North Dakota Century Code, relating to the operation of self-service motor fuel dispensing facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility, the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense ~~such~~ motor fuel safely. If, however, the filling station provides pump island service to its customers, the attendant must provide refueling services to any mobility-impaired person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate issued under section 39-01-15. No additional cost may be charged to a mobility-impaired person because of the service. This subsection does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or, credit card-operated, cash-operated, or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device. Self-service motor fuel dispensing units equipped with a card-operated, credit card-operated, cash-operated, or key-operated dispensing device are subject to and must conform with the emergency controls, emergency contact, and fire control standards as specified by the national fire protection association. In addition, the operating instructions, warning signs, and emergency instructions specified in the standards of the national fire protection association must be conspicuously posted in the dispensing area.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 274

SENATE BILL NO. 2218  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### HEALTH DISTRICT EXPANSION OR MERGER

AN ACT to create and enact five new sections to chapter 23-14 of the North Dakota Century Code, relating to health district expansion or merger; and to amend and reenact subsection 1 of section 23-14-11 of the North Dakota Century Code, relating to the mill levy for health districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-14-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit that budget to the board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of ~~two and one-half~~ five mills on the taxable valuation, subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

SECTION 2. A new section to chapter 23-14 of the North Dakota Century Code is created as follows:

Authority to adopt rules. The department may adopt rules to implement this chapter. The rules must include provisions to aid health districts in providing equality of health care and to provide a procedure for distributing grants.

SECTION 3. A new section to chapter 23-14 of the North Dakota Century Code is created as follows:

Expansion of health districts - Request of nonparticipating city or county. A county contiguous to a health district, or a city adjacent to a county that is a health district, which is not included within any health district may, upon adoption of a resolution by its governing body, request that it be included as a part of an existing health district. Upon a receipt of a request to become a part of an existing health district, the board of the health district shall consider the request, and if it approves the request by a majority vote shall submit the matter to the governing board of each county and city which comprises the health district. If each governing board approves the request by a majority vote, the requesting county or city becomes a part of the health district.

SECTION 4. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Approval of state health officer. Each entity submitting a request to be included within a health district shall first obtain the approval of the state health officer. The state health officer, or the state health officer's designee, shall confer individually with the requesting county or city and the existing health district concerning the health needs of each. If the state health officer is satisfied the needs of the requesting county or city comport with the needs of the existing health district, the state health officer shall grant approval for the submission of the request pursuant to section 1 of this Act.

SECTION 5. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Number of board members. Upon expansion of a health district pursuant to sections 1 and 2 of this Act, the number of board members must be adjusted to allow the added county or city the same proportion of members allowed to member cities and counties of the existing health district as determined under section 23-14-04.

SECTION 6. A new section to chapter 23-14 of the North Dakota Century Code is created and enacted as follows:

Expansion of health district - Merger of participating health districts. Any two or more contiguous health districts may merge into a single health district upon a majority vote of their respective boards and a majority vote of each of the governing boards of the respective city or county. The assets of each merging health district become the property of the newly created health district. Board membership of the new health district must be determined pursuant to section 23-14-04. The new health district has the same authority and may exercise any of the powers that could have been exercised by the previous health districts. The mill levy in the newly created health district may differ from, and is not limited by, the mill levy levied previously but may not exceed the amount which may be levied under section 23-14-11.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 275

SENATE BILL NO. 2158  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health  
and Consolidated Laboratories)

### NURSING FACILITY LICENSING

AN ACT to amend and reenact section 23-16-11 of the North Dakota Century Code, relating to civil penalties for violating nursing facility licensing requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-16-11 of the North Dakota Century Code is amended and reenacted as follows:

23-16-11. Penalties.

1. Any person establishing, conducting, managing, or operating any institution ~~within the meaning of~~ subject to this chapter, without first obtaining a license ~~therefor as herein provided as required by this chapter~~, or who ~~shall violate~~ violates any of the provisions of this chapter ~~shall be~~ is guilty of an infraction.
2. In addition to any criminal sanctions that may be imposed pursuant to law, any person maintaining or operating a nursing facility licensed by the department who is found guilty of knowingly violating any provision of this title or any rules adopted under this title, or any person maintaining or operating a nursing facility found to have deficiencies during a survey of the nursing facility, may be assessed a civil penalty not to exceed one thousand dollars for each violation and for each day the violation continues plus interest and any costs incurred by the department to enforce this penalty. This civil penalty may be imposed by a court in a civil proceeding or by the state health officer through an administrative hearing under chapter 28-32. If a civil penalty levied by the department after an administrative hearing is not paid within thirty days after a final determination that a civil penalty is owed, unless the determination of a civil penalty is appealed to a district court, the civil penalty and any costs incurred by the department to enforce the penalty may be withheld from payments due to the person or nursing facility from the department of human services. Any funds received as penalties must be applied to protect residents of the nursing facility, to relocate residents, to maintain operation of the nursing facility and to reimburse residents for loss of personal funds.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 276

HOUSE BILL NO. 1216

(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### NURSING FACILITY RECEIVERSHIP

AN ACT to create and enact sections 23-16.1-02.1 and 23-16.1-02.2 of the North Dakota Century Code, relating to appointment of a receiver of a nursing facility in cases of imminent threats to life or health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 23-16.1-02.1 of the North Dakota Century Code is created and enacted as follows:

23-16.1-02.1. Imminent threat to health or safety - Conditions for appointment of receiver - Appointment of receiver. If the department determines a situation exists which constitutes an imminent threat to health or safety of the residents of a nursing facility, the department may take immediate control of the nursing facility and appoint an interim administrator. Within ten days of taking control of a nursing facility, the department shall petition the district court of the district in which the nursing facility is located to establish a receivership. The court shall grant the petition if it finds the department is substantially justified in concluding there was an imminent threat to life or health of the residents. In making its decision the court shall consider the matters set forth in section 23-16.1-02, any matters that the department considered in reaching its decision, and any other matters bearing on the ability of the nursing facility to provide for the health or safety of its residents. If the court grants the petition, the court shall also reconfirm the appointment of the interim administrator or direct the state health officer to choose another pursuant to section 23-16.1-03. Any receiver reconfirmed or appointed pursuant to this section shall comply with sections 23-16.1-03 through 23-16.1-05. Neither the department nor the court may terminate the appointment of a receiver appointed under this section until the nursing facility has complied with federal and state law and demonstrated management capability to ensure continued compliance and the health and safety of the residents.

As used in this section, an "imminent threat to health or safety" means without intervention one or more of the following will occur to the residents: death, loss of mobility, partial disability, loss of motor skills, loss of speech, hearing, sight, or other ability to function within normal limits for an individual of that age and condition.

SECTION 2. Section 23-16.1-02.2 of the North Dakota Century Code is created and enacted as follows:

23-16.1-02.2. Closure of facility or removal of residents. In the event of an emergency any receiver appointed under section 23-16.1-02.1 may remove any or all residents of a nursing facility and close the facility if deemed necessary.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 277

HOUSE BILL NO. 1060  
(Legislative Council)  
(Interim Political Subdivisions Committee)

**SOLID WASTE REDUCTION AND MANAGEMENT**

AN ACT to create and enact a new subsection to section 23-29-02, four new subsections to section 23-29-04, and eleven new sections to chapter 23-29 of the North Dakota Century Code, relating to solid waste management; to amend and reenact subsections 3 and 5 of section 23-20.2-02, section 23-29-03, subsection 8 of section 23-29-04, sections 23-29-05, 23-29-06, 23-29-12, and subsection 1 of section 39-10-59 of the North Dakota Century Code, relating to solid waste management; to repeal sections 23-29-15 and 24-12-03 of the North Dakota Century Code, relating to a short title and to the deposit of garbage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 23-20.2-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste, ~~but shall~~. The term does not include a solid waste management facility, ~~sanitary landfill~~, authorized under chapter 23-29.
5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in ~~subsection 5 of~~ section 23-29-03, and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

SECTION 2. A new subsection to section 23-29-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

SECTION 3. AMENDMENT. Section 23-29-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-03. Definitions.

1. "Collection" means the act of removing aggregation of solid wastes waste from the central storage point of the primary source or residential container places at which the waste was generated.
2. "Department" means the state department of health and consolidated laboratories charged with the administration and enforcement of this chapter.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
5. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
6. "Litter" means discarded and abandoned solid waste materials.
7. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
8. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste.
9. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
10. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
11. "Political subdivision" means a city, county, township, or solid waste management authority.
- 5- 12. "Resource recovery" means the recovery of material or energy use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid wastes municipal waste.
- 6- "Sanitary landfilling" means an engineered method of disposing of solid wastes on land in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with soil by the end of each working day.



- 7- 13. "Solid wastes waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, ~~but~~. The term does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges ~~which~~ that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.].
- 8- 14. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, ~~handling, composting, resource recovery, land treatment, and disposal~~ of solid wastes waste.
- 9- 15. "Special waste" means nonhazardous solid waste, including: waste from the combustion or gasification of municipal waste; waste from industrial and manufacturing processes; waste from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste.
16. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- +0- 17. "Transport" means the offsite movement of solid waste ~~subsequent to collection and prior to disposal~~.

SECTION 4. AMENDMENT. Subsection 8 of section 23-29-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. ~~Prepare, adopt, promulgate, modify, repeal,~~ Adopt and enforce rules and regulations governing solid waste storage, collection, transport, handling, resource recovery, and disposal management, in order to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable ~~it~~ the department to carry out the purposes and provisions of administer this chapter ~~and~~, the adopted solid waste management plan, and delegated federal programs.

SECTION 5. Four new subsections to section 23-29-04 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

Adopt rules to establish categories of solid waste and solid waste management facilities based on waste type, facility operation, or other facility characteristics.

Adopt rules to establish standards and requirements for each category of solid waste management facility.

Adopt rules to establish financial assurance requirements to be met by any person proposing construction or operation of a solid waste management facility sufficient to provide for closure and postclosure activities. Financial assurance requirements must include any or all of the following: insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, and financial tests or corporate guarantees.

Conduct an environmental compliance background review of any applicant for any permit requested after the effective date of this Act. In conducting the review, if the department finds that an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, or has obtained a permit by intentional misrepresentation or concealment of a material fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony involving the laws of any state or the federal government within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government within three years preceding the application for the permit, the department may deny the application. The department shall consider the relevance of the offense to the business to which the permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

SECTION 6. AMENDMENT. Section 23-29-05 of the North Dakota Century Code is amended and reenacted as follows:

23-29-05. Municipal local government ordinances. Any political subdivision of the state may enact and enforce a solid waste management ordinance if such ordinance is equal to or more stringent than this chapter and the rules and regulations authorized herein adopted pursuant to this chapter.

SECTION 7. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Littering and open burning prohibited - Penalty.

1. No person may discard and abandon any litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. No person may engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meters] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor.

SECTION 8. AMENDMENT. Section 23-29-06 of the North Dakota Century Code is amended and reenacted as follows:

~~23-29-06. Regional District solid waste management - Penalty. Cities, townships, counties, and agencies, and any combination thereof, may by ordinance or contract join in a regional solid waste management agency or program.~~

1. All land in this state must be within a solid waste management district.
2. The boundaries of each district must be established pursuant to chapter 54-40.1 and as delineated by executive order of the governor number 1978-12, affirmed by executive order number 1986-4.
3. The governing board of each solid waste management district must include a representative of each county within the district, one representative from cities within each county within the district, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. Members representing political subdivisions must be appointed by the subdivisions involved. The members representing licensed disposal facilities and waste haulers must be selected by the members appointed by the political subdivisions from a list of candidates submitted by each of those groups. The members of the board may be the members of the regional planning councils appointed under subdivision a of subsection 1 of section 54-40.1-03.
4. The members of the district board annually shall select a chairman and vice chairman. Each member may receive compensation for service on the board and is entitled to reimbursement of expenses at the rate provided by law for state officials. Any compensation and reimbursement of expenses of the public entity representatives must be made by the governing bodies of the entities making the appointments to the district board and any compensation and reimbursement of expenses of the private entity representatives must be made by the private entity represented by the member.
5. A political subdivision may opt out of one solid waste management district and join another if the board of each district involved consents to the change.
6. Solid waste must be managed at solid waste management facilities identified in the district's solid waste management plan. A person who violates this subsection is subject to a civil penalty not to exceed twenty-five thousand dollars per day per violation.
7. By January 1, 1992, the department shall adopt rules establishing guidelines for the submission of comprehensive solid waste management plans as required under subsection 8.
8. By January 1, 1993, each solid waste management district shall submit a comprehensive solid waste management plan to the department for approval. The plan must include the district's ability to properly manage and plan for adequate capacity, accessibility, and waste flow control. The plan must take into

consideration existing waste transportation patterns and the ability of existing landfills to handle solid waste.

9. By July 1, 1993, the department shall incorporate all of the district solid waste management plans into a comprehensive statewide solid waste management plan.

SECTION 9. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Powers of a solid waste management district. A solid waste management district may:

1. Execute contracts and take other actions necessary to carry out the purposes of the district.
2. Accept and administer federal and state grants and loans.
3. Appropriate and expend moneys.
4. Establish bylaws for the management of the affairs of the district and enact and enforce rules necessary for the conduct of the district.

SECTION 10. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

District authority limitation. Sections 8 and 9 of this Act apply to energy conversion facilities and coal mining operations that dispose their solid waste onsite, only to the extent that these facilities provide the districts with sufficient information to include in the district's development of a comprehensive plan for the district.

SECTION 11. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Solid waste management districts - Authorities or programs. The governing bodies of political subdivisions participating in a solid waste management district may establish and operate a waste management authority pursuant to chapter 54-40 and section 11-11-14 or may establish a solid waste management program pursuant to section 40-05-01. The waste management authority or program may provide solid waste management services and determine charges for those services.

SECTION 12. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.

1. Infectious waste must be properly treated before disposal by methods approved by the department. A person may not knowingly deposit in a landfill untreated infectious waste.
2. Except as provided in subsection 3, after January 1, 1992, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used-motor oil, or major appliances.

3. If resource recovery markets are not available for the items listed in subsection 2, the items must be disposed of in a manner approved by the department.
4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any person who sells lead-acid batteries at retail.

SECTION 13. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Preconstruction site review. The department, in cooperation with the state engineer and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the state engineer and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the state engineer and state geologist.

SECTION 14. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Review of existing municipal waste landfills. By July 1, 1995, the state engineer and state geologist shall complete site suitability reviews of all existing municipal waste landfills within the state. The reports of such reviews must be provided to the department for use in site improvement, site remediation, or landfill closure.

SECTION 15. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Waste characterization. The department may not allow the storage or disposal of solid waste from outside this state, unless it is demonstrated that the governing authority or the generator of the solid waste from outside this state has an effective program for waste quality control and for waste characterization.

SECTION 16. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Municipal waste landfills and incinerators - Certification. A municipal waste landfill and a municipal waste incinerator must have at least one individual certified by the department onsite at all times during the operation of the landfill or incinerator. The department shall adopt training standards and certification requirements.

SECTION 17. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Public educational materials - Municipal waste reduction and recycling. The department, after consulting with the superintendent of public instruction, shall develop and disseminate educational materials to encourage voluntary municipal waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of municipal waste.

SECTION 18. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Statewide coordinating committee. The chairman of the governing board of each solid waste management district shall select a representative to serve on a statewide solid waste management coordinating committee. A representative of the department, the state engineer, and the state geologist shall also serve on the committee. The coordinating committee shall assist the districts in managing and regulating solid waste and shall coordinate efforts of the districts with state agencies. In addition, the coordinating committee shall review alternative means of managing solid waste including a review of forms of public ownership and financial assurance mechanisms for waste management facilities. A report of the review must be provided to the legislative assembly and the governor by January 1, 1993.

SECTION 19. AMENDMENT. Section 23-29-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-12. Penalties. Any ~~Unless another penalty is specifically prescribed, a person violating any provision of this chapter, or any rule, regulation, order, or condition in a permit condition issued thereunder under this chapter,~~ is subject to a civil penalty not to exceed three hundred one thousand dollars per day of such violation.

SECTION 20. AMENDMENT. Subsection 1 of section 39-10-59 of the North Dakota Century Code is amended and reenacted as follows:

1. No person may throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, rubbish, or any other substance likely to injure any person, animal, or vehicle, ~~or throw or deposit rubbish of any kind upon the highway.~~

SECTION 21. REPEAL. Sections 23-29-15 and 24-12-03 of the North Dakota Century Code are repealed.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 278

HOUSE BILL NO. 1111  
(Committee on Natural Resources)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### HAZARDOUS WASTE LAW EXEMPTIONS

AN ACT to amend and reenact section 23-20.3-10 of the North Dakota Century Code, relating to applicability of hazardous waste laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-20.3-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-20.3-10. Applicability. The hazardous waste provisions of this chapter do not apply to the following wastes to the degree to which they are exempted from regulation by sections 3001(b)(2) and 3001(b)(3)(A) of the Resource Conservation and Recovery Act as amended by the Solid Waste Disposal Act Amendments of 1980 [P.L. 96-482]:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
2. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
4. Cement kiln dust waste.

Except, that when a waste disposal site for any of the above wastes is to be closed, the owner or operator shall file a plat of the disposal site with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 279

HOUSE BILL NO. 1397  
(Representatives Mahoney, Grosz)  
(Senator Stenehjem)

### **CONTRACTOR'S LICENSE FOR ASBESTOS REMOVAL**

AN ACT to amend and reenact subsection 4 of section 23-25-04.1 of the North Dakota Century Code, relating to permits for asbestos contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-25-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Possession of an approved permit or registration certificate ~~shall~~ does not relieve any person of the responsibility to comply with applicable emission limitations or with any other provision of law or regulations adopted pursuant thereto and does not relieve any person from the requirement that that person possess a valid contractor's license issued under chapter 43-07.

Approved March 8, 1991  
Filed March 8, 1991



## CHAPTER 280

HOUSE BILL NO. 1207  
(Committee on Natural Resources)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### WATER SUPPLY AND WASTEWATER DISPOSAL SYSTEM OPERATORS

AN ACT to amend and reenact sections 23-26-01, 23-26-02, 23-26-03, 23-26-05, 23-26-06, 23-26-07, and 23-26-08 of the North Dakota Century Code, relating to certification of water supply and wastewater disposal system operators; and to repeal section 23-26-04 of the North Dakota Century Code, relating to an advisory board of certification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-26-01 of the North Dakota Century Code is amended and reenacted as follows:

23-26-01. Statement of policy. It is hereby declared to be the policy of the state of North Dakota to act to protect the public health and welfare of the people of the state and to protect the state's water resources by classifying all public water supply and wastewater ~~treatment plants disposal systems~~ in the state and by requiring the examination of operators and the certification of their competency to supervise the operations of such facilities.

SECTION 2. AMENDMENT. Section 23-26-02 of the North Dakota Century Code is amended and reenacted as follows:

23-26-02. Definitions. For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

- ~~3-~~ 1. "Certificate" ~~shall mean~~ means a certificate of competency issued by the ~~state health officer department~~ stating that the operator holding the certificate has met the requirements for the specified operator ~~classification grade~~ in the certification program.
- ~~1-~~ 2. "Department" ~~shall mean~~ means the North Dakota state department of health and consolidated laboratories.
- ~~2-~~ "Board" ~~shall mean the board of certification-~~
3. "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

- ~~6-~~ 4. "Operator" ~~shall mean~~ means the person in direct responsible charge of the operation of a water treatment plant, a water distribution system, or a wastewater treatment plant. Operators of plants or systems serving less than ten families are excluded from this chapter, or a wastewater collection system.
5. "Population equivalent" for a wastewater collection system or treatment plant means the calculated population that would normally contribute the same amount of biochemical oxygen demand per day computed on the basis of seventeen hundredths of one pound [77.11 grams] of five-day, twenty-degree Celsius [68-degree Fahrenheit] biochemical oxygen demand per capita per day.
6. "Wastewater collection system" means that portion of the wastewater disposal system in which wastewater is conveyed to a wastewater treatment plant from the premises of a contributor.
7. "Wastewater disposal system" means the system of pipes, structures, and facilities through which wastewater from a public sewer system or industry is collected and treated for final disposal. Such system must serve a population equivalent of twenty-five or more persons.
- ~~7-~~ 8. "Wastewater treatment plant" ~~shall mean~~ the facility or group of units means that portion of the wastewater disposal system used for the treatment and disposal of wastewater from public sewer systems and for the reduction in handling of solids removed from such wastes and which serves ten or more families or an industry employing ten or more persons and the solids removed from such wastewater.
- ~~6-~~ 9. "Water distribution system" ~~shall mean~~ means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
- ~~4-~~ 10. "Water supply system" ~~shall mean~~ means the system of pipes, structures, and facilities through which a public water supply is obtained, treated, and sold or distributed for human consumption or household use. Such system shall serve at least ten must have at least fifteen service connections or regularly serve an average of twenty-five or more families or shall serve an industry employing ten or more persons for at least sixty days a year.
- ~~5-~~ 11. "Water treatment plant" ~~shall mean~~ means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

SECTION 3. AMENDMENT. Section 23-26-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-26-03. Classification of plants and systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants and wastewater collection systems with due regard to the size, type, character of water and wastewater to be treated and other physical conditions affecting such treatment plants and distribution systems facilities, and according to the skill, knowledge, and experience that an

operator in responsible charge must have to successfully supervise the operation of such water treatment plants, water distribution systems, and wastewater treatment plants facilities, so as to protect the public health and prevent pollution of the waters of the state.

SECTION 4. AMENDMENT. Section 23-26-05 of the North Dakota Century Code is amended and reenacted as follows:

23-26-05. Certification. When the department is satisfied that an applicant is qualified by examination or otherwise to supervise the operation of such treatment plants and water distribution systems and upon recommendation of the advisory board, the department will issue a certificate attesting to the competency of the applicant as an operator. The certificate will indicate the classification of works treatment plant or system which the operator is qualified to supervise. Such certificates shall continue in effect for one year from the date of issuance, unless sooner revoked by the department.

1. Renewal of certificate. A certificate issued under the provisions of this chapter is valid for only one year and expires on the first day of July of the year after which it was issued.
2. Revocation. The department may revoke or suspend the certificate of an operator issued hereunder if it is found that the operator has practiced fraud or deception in obtaining the certificate or in the performance of his duty as an operator; or when it is found that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or when it is found that the operator is incompetent and unable properly to perform his duties as an operator. No certificate shall be revoked or suspended except after a hearing before the chief, environmental health and engineering services, state department of health section of the department, or his designated representative. If a certificate is suspended or revoked as herein provided, a new application for certification may be considered by the department if, when, and after the conditions upon which suspension or revocation was based have been corrected and evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department.
- 2- 3. Prior certificates honored. Certificates in appropriate classification will be issued to operators, who, on before the effective date of this chapter, hold certificates of competency attained under the voluntary certification program in this state at such time they submit a proper application shall continue in effect.
- 3- Certificates of proper classification shall be issued without examination to operators of treatment works, collection systems or distribution systems, including the person who is in direct responsible charge, on the effective date of this chapter. The governing body or owner must certify such persons in writing to the department. The certificates so issued will be valid only for that particular treatment plant or system, and shall be marked "restricted".

SECTION 5. AMENDMENT. Section 23-26-06 of the North Dakota Century Code is amended and reenacted as follows:

23-26-06. Fees. The department is authorized to charge a fee for certificates issued under this chapter, but such fees shall not exceed ~~ten~~ five ~~fifty~~ twenty-five dollars for the initial certificate, nor more than five ~~twenty-five~~ dollars for the annual renewal certificate. All receipts from such fees shall be deposited in the state treasury to be credited to a special fund to be known as the "operators' certification fund" to be used by the department to administer and enforce the provisions of this chapter, ~~to pay the expenses of the advisory board,~~ and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year shall be retained by the department for future expenditures.

SECTION 6. AMENDMENT. Section 23-26-07 of the North Dakota Century Code is amended and reenacted as follows:

23-26-07. Duties of the department. It shall be the duty of the department to:

1. Hold at least one examination each year at ~~the~~ a designated time and place for the purpose of examining candidates for certification.
2. ~~Advise and promote~~ Promote the program of certification of water supply and wastewater disposal system operators.
3. Distribute applications notices and notices applications and to receive and evaluate applications.
4. Collect fees for ~~both~~ initial certification and annual renewal in an amount not to exceed that permitted by this chapter.
5. Prepare, conduct, and grade examinations.
6. Maintain records of operator qualifications, ~~and~~ certification examination results, and ~~to maintain~~ a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Promulgate, ~~with the advice of the advisory board,~~ such rules and ~~regulations as are~~ necessary to carry out the provisions of this chapter.

SECTION 7. AMENDMENT. Section 23-26-08 of the North Dakota Century Code is amended and reenacted as follows:

23-26-08. Unlawful operation. ~~On and after one year following the effective date of this chapter, it shall be unlawful for any person, firm, corporation, municipality, or any other governmental subdivision or agency, operating a water treatment plant, water distribution system, or wastewater treatment plant serving a demand equal to one thousand five hundred or more persons to operate same unless the competency of the operator to operate such a plant or system is duly certified to by the department in a grade corresponding to the classification of that portion of the system to be supervised. Provided, however, that plants and systems serving a demand~~

equal to five hundred or more persons shall comply with the provisions of this chapter not later than July 1, 1976. Except as provided below, is unlawful for any person, firm, corporation, municipality, or any other governmental subdivision or agency, after three years following the effective date of this Act, to operate a water treatment plant or water distribution system serving twenty-five or more persons or a wastewater treatment plant or wastewater collection system serving a population equivalent of twenty-five or more persons unless the competency of the operator to operate such a plant or system is certified by the department in a grade corresponding to the classification of that portion of the system to be supervised. Operators of wastewater collection systems and wastewater stabilization ponds or other nonmechanical wastewater treatment plants that serve a population equivalent less than five hundred persons are excluded from this chapter. Operators of water supply systems that serve other than year-round residents are excluded from this chapter if all of the following conditions are met:

1. The water supply is obtained solely from ground water sources that are not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.
3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

SECTION 8. REPEAL. Section 23-26-04 of the North Dakota Century Code is repealed.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 281

HOUSE BILL NO. 1131  
(Committee on Political Subdivisions)  
(At the request of the Department of Health and  
Consolidated Laboratories)

### LICENSED AMBULANCE SERVICE FINANCIAL ASSISTANCE

AN ACT to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state financial assistance to licensed ambulance services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. Licensed ambulance services - State assistance. The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ambulance services licensed under this chapter as determined by the branch and financially shall assist certain ambulance services licensed under this chapter as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of licensed ambulance services. To qualify for financial assistance for equipment, a licensed ambulance service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The health services branch may establish minimum and maximum amounts of financial assistance to be provided an ambulance service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. ~~The health services branch shall distribute the funds on June thirtieth of each year.~~ No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 282

SENATE BILL NO. 2162  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### **EMERGENCY MEDICAL SERVICES PERSONNEL**

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to training, testing, and certification of emergency medical services personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-27 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Emergency medical services personnel training, testing, and certification. The state health council shall adopt rules prescribing minimum training, testing, and certification standards for prehospital emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of prehospital emergency medical services personnel, and provide for a mechanism for certifying persons who have met the required standards.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 283

SENATE BILL NO. 2090  
(Freborg)

### SOLID WASTE DISPOSAL FACILITIES

AN ACT to prohibit the department of health and consolidated laboratories from issuing permits for the construction or operation of certain solid waste disposal facilities; to amend and reenact section 23-29-07.1 of the North Dakota Century Code, relating to fees for solid waste facility permits; to provide for a legislative council study of solid waste disposal methods and facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Moratorium on permit applications of certain solid waste disposal facilities. The department of health and consolidated laboratories shall suspend for two years after the effective date of this Act any decisions related to permit applications received after January 1, 1991, for the construction or operation of a landfill in which ash resulting from the incineration of municipal solid waste is disposed. The moratorium is established to provide the opportunity for additional study of the environmental effects of the disposal of municipal solid waste ash and the regulations necessary to obtain a permit for those solid waste disposal facilities. This section does not apply to any permit application for a landfill that receives for disposal ten tons [9071.80 kilograms] or less per day of the ash or to any North Dakota or federal court-ordered reapplication involving an application originally received prior to January 1, 1991, and which is limited to the type and amount of waste represented in the original application.

SECTION 2. AMENDMENT. Section 23-29-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-29-07.1. Fees - Deposit in operating fund. The department by rule may prescribe and provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling or disposal facilities. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. Applicants for special use solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.



2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

SECTION 3. LEGISLATIVE COUNCIL STUDY OF SOLID WASTE DISPOSAL METHODS AND FACILITIES. During the 1991-92 interim the legislative council shall study the effects of various methods of solid waste disposal and of solid waste disposal facilities, with emphasis on the disposal of ash resulting from the incineration of municipal solid waste. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-third legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 284

HOUSE BILL NO. 1061  
(Legislative Council)  
(Interim Political Subdivisions Committee)

### SOLID WASTE SURCHARGE

AN ACT to create and enact four new sections to chapter 23-29 of the North Dakota Century Code, relating to solid waste management; to provide a penalty; to provide an appropriation; and to state legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

**Solid waste management fund - Administration.** The solid waste management fund is a special fund in the state treasury. The Bank of North Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund balance including the principal balance of the outstanding loans as a service fee for administering the fund. The Bank shall contract with a certified public accounting firm to audit the fund once every two years. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund. Section 54-44.1-11 does not apply to the fund.

SECTION 2. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

**Surcharge - Penalty.** Beginning January 1, 1992, any person or political subdivision that provides services for the collection of municipal waste shall pay to the state tax commissioner a monthly surcharge of twenty cents for each household account, which includes any account resulting from the collection of municipal waste generated by a single residence, multiple residence of not more than three units, bunkhouse, crew quarters, campground, or picnic ground, and the following monthly surcharges for commercial accounts:

1. For each commercial account for which the monthly collection fee is not more than ten dollars, twenty cents.
2. For each commercial account for which the monthly collection fee is more than ten dollars but not more than fifty dollars, seventy-five cents.
3. For each commercial account for which the monthly collection fee is more than fifty dollars but not more than one hundred dollars, one dollar and fifty cents.

4. For each commercial account for which the monthly collection fee is more than one hundred dollars but not more than five hundred dollars, three dollars.
5. For each commercial account for which the monthly collection fee is more than five hundred dollars, one percent of the gross receipts for collection services.

The monthly surcharge for a multiple unit commercial account is twenty cents per unit or the applicable commercial rate under subsections 1 through 5, whichever is higher. For the purposes of this section, a commercial account includes any account resulting from the collection of municipal waste generated by a multiple residence of four or more units, mobile home park, motel, hotel, store, office building, restaurant, or warehouse. A multiple unit commercial account includes a multiple residence of four or more units, a mobile home park, a shopping center, an office building, and any other commercial account in which four or more units pay a single collection fee. The surcharge must be added to the price or charge for collection services, constitutes a part of that price or charge, is a debt from the generator of the waste to the collector until paid, and is recoverable at law in the same manner as other debts. A surcharge equivalent to that for commercial accounts must be assessed on fees imposed on municipal waste delivered directly to a landfill but not included in the collection surcharge above. The surcharge collected under this section must accompany the quarterly report required by section 3 of this Act. The state tax commissioner shall forward all moneys received under this section to the state treasurer quarterly. The state treasurer shall place the moneys in the solid waste management fund. A person who violates this section is guilty of a class B misdemeanor.

SECTION 3. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Report of surcharge collection. No later than thirty days after the conclusion of each quarter, each person or political subdivision operating a service for collection of municipal waste shall send to the state tax commissioner a correct report of the surcharge collected for the previous quarter as required under section 2 of this Act. The provisions of chapter 57-39.2 relating to the administration of the sales tax, except the provisions relating to refunds and credits and any provision in conflict with this Act, govern the administration of the surcharge imposed under section 2 of this Act. A surcharge that has been collected, but which is not due, must be used to offset any surcharge to be imposed against the person from whom the surcharge was originally collected. A dispute relating to the imposition of the surcharge may be appealed to the department for a final decision. The department's decision may not be appealed under chapter 28-32.

SECTION 4. A new section to chapter 23-29 of the North Dakota Century Code is created and enacted as follows:

Applications for grants or loans - Loan terms. Moneys in the solid waste management fund may be used to make grants or low interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. An application for a grant or loan out of moneys in the solid waste management fund must be made to the department. The department shall review an application to determine if the purpose of the grant or loan is consistent with the purposes of the fund and

the district solid waste management plan. The department shall adopt rules to implement this section. If the department approves an application, the department shall forward the application and the results of the department's review of the application to the Bank of North Dakota. The Bank, in consultation with the department, shall determine the financial criteria that must be met for an application to be approved. A loan must be repaid within a period not exceeding twenty years at an interest rate of four percent.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund, not otherwise appropriated, the sum of \$350,000, or so much thereof as may be necessary, to the department of health and consolidated laboratories for distribution to the solid waste management districts to assist the districts in developing comprehensive solid waste management plans for each district, and \$100,000, or so much thereof as may be necessary, to the department of health and consolidated laboratories to provide assistance to the solid waste management districts in developing the comprehensive plans for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that any moneys remaining in the solid waste management fund on June 30, 1993, be available for appropriation for the biennium beginning July 1, 1993, and ending June 30, 1995, and that the fund be used solely for the purpose of solid waste management activities.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 285

HOUSE BILL NO. 1422  
(Starke, Jacobson, Wentz)

### HOSPITAL DISTRICT SIZE

AN ACT to amend and reenact subsection 1 of section 23-30-02 of the North Dakota Century Code, relating to the area to be included in a hospital district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-30-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board of county commissioners of any county, or two or more boards of county commissioners acting jointly, shall, when requested to do so by petition of twenty percent of the qualified electors of the area to be included in a proposed hospital district, as determined by those voting for governor in that geographical area at the last gubernatorial election, ~~in any territory equivalent in area to one township or more,~~ submit the question to the qualified electors at a special election or the next regularly scheduled primary or general election as to whether or not the qualified electors of the area desire to establish a hospital district and whether they approve of the mill levy authorized by section 23-30-07 for the purpose of supporting such hospital district. If sixty percent of the qualified electors voting in the election within the proposed district approve, the county commission or county commissions, as the case may be, shall, by resolution, create the hospital district comprising the entire area as described in the petition.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 286

SENATE BILL NO. 2231  
(Committee on Natural Resources)  
(At the request of the State Department of Health  
and Consolidated Laboratories)

### GROUND WATER PROTECTION

AN ACT relating to protection of ground water resources, use of chemicals, coordination of educational programs and safe disposal of wastes, and water monitoring authority where contamination may exist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Degradation prevention program - Maintenance of waters. This Act establishes a degradation prevention program for the purpose of protecting ground water resources, encouraging the wise use of agricultural chemicals, providing for ground water protection, providing for public education regarding preservation of ground water resources, and providing for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this Act unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

SECTION 2. Administration of Act. The state department of health and consolidated laboratories shall administer this Act. For purposes of this Act, "commissioner" means the commissioner of agriculture and "department" means the state department of health and consolidated laboratories. Notwithstanding section 4-35-06, the commissioner of agriculture shall administer chapter 4-35 as it relates to pesticide usage.

SECTION 3. Education program. The department, the commissioner, and the North Dakota state university extension service and North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

SECTION 4. Chemical use data and confidentiality requirement. The department may require chemical use data from product registrants on products that have been or may likely be found in ground water in order to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

SECTION 5. Ground water standards. The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

SECTION 6. Ground water quality monitoring. The department shall conduct ground water quality monitoring activities in cooperation with the

state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as it relates to the use of pesticides.

**SECTION 7. Notification requirement.** Any person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding such contamination.

**SECTION 8. Access for ground water monitoring.** The department may request landowners or operators to allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon such application and upon compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a ground water monitoring program may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies such disclosure. Without such a determination, disclosure of the information is a violation of section 12.1-13-01.

**SECTION 9. Pollution prevention criteria.** The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing of agricultural chemicals at the retail and end use levels.

**SECTION 10. Wellhead protection program.** The department in cooperation with the state engineer and state geologist shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

**SECTION 11. Rules.** The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this Act.

**SECTION 12. Producer liability.** Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.

Approved April 16, 1991  
Filed April 18, 1991

# HIGHWAYS, BRIDGES, AND FERRIES

## CHAPTER 287

HOUSE BILL NO. 1551  
(Laughlin, Flaagan, Gerntholz)

### MINIMUM MAINTENANCE ROAD SIGNS

AN ACT to create and enact a new subsection to section 24-01-01.1 of the North Dakota Century Code, relating to definition of the director of the department of transportation; and to amend and reenact section 24-07-36 of the North Dakota Century Code, relating to required signs on minimum maintenance roads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 24-01-01.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Director" means the director of the department of transportation.

SECTION 2. AMENDMENT. Section 24-07-36 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-07-36. Required signs on minimum maintenance roads. The body making a designation of a minimum maintenance road shall post signs at the beginning ~~and the end~~ of the road and at regular intervals along the road. The signs must conform to standards adopted by the director ~~of the department of transportation~~ by rule. If the signs are properly posted, that fact is prima facie evidence that adequate notice of the road's status as a minimum maintenance road has been given to the public.

Approved March 25, 1991  
Filed March 26, 1991



## CHAPTER 288

HOUSE BILL NO. 1203  
(Committee on Transportation)  
(At the request of the Department of Transportation)

## DEPARTMENT OF TRANSPORTATION BID SOLICITATION

AN ACT to create and enact a new subsection to section 24-01-01.1 of the North Dakota Century Code, relating to definition of the term director; and to amend and reenact section 24-02-19 of the North Dakota Century Code, relating to department of transportation bidding procedures for construction, and equipment, materials, and supplies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 24-01-01.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Director" means the director of the department of transportation of this state, acting directly or through authorized agents as provided in section 24-02-01.3.

SECTION 2. AMENDMENT. Section 24-02-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-19. Request for bids - How advertised solicited. Any request for bids for construction work or the improvement of any state highway, or any structure in excess of the amount specified in section 24-02-17, shall must be advertised by publication once a week for a period of three successive weeks; prior to the opening of such bids, in the official newspaper of the county in which the project is located. Such Any other advertisement made by the director may utilize one or more of the following methods:

1. The publication of the solicitation in a daily newspaper having a general circulation in the area where the project is located.
2. The publication of the solicitation in commonly recognized trade journals or similar publications that advertise the solicitation of bids on public work projects.
3. The written solicitation of all qualified contractors appearing on the bidders' list as maintained by the department of transportation.

When the solicitation is by publication, it must be made at least three weeks prior to the date of the bid opening. The solicitation shall state where the bidder may inspect the plans and specifications, with whom bids shall be filed, and the time and place where bids shall be opened. Such place shall be the office of the department.

All requests for bids for the purchase of equipment, materials, and supplies, exclusive of repairs to equipment and except as provided in section 25-16.2-02 in excess of the sum of ~~two~~ ten thousand dollars ~~shall~~ must be advertised in the official newspaper of ~~Burleigh County~~ the county in which the department district is located. The advertisement must be published once a week for a period of two successive weeks prior to the opening of such bids.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 289

HOUSE BILL NO. 1159  
(Committee on Transportation)  
(At the request of the Department of Transportation)

**DEPARTMENT OF TRANSPORTATION MATTERS**

AN ACT to amend and reenact subsections 1 and 3 of section 24-02-01.4, section 24-02-42, and subsections 1, 2, and 4 of section 57-15-06.3 of the North Dakota Century Code, relating to the organization of the department of transportation, the amount of department of transportation educational financial aid, and the elimination of federal highway administration approval of county farm-to-market road programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 24-02-01.4 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The director shall establish an office of ~~motor vehicles driver and vehicle services~~ to administer the department's regulatory authority over motor vehicle titling and registration, operator licensing and traffic safety, and motor carriers. Operating expenses for functions performed by the department under chapters 39-04 and 39-05 must be funded by appropriations from collections made under those chapters before deposit into the fund provided by section 54-27-19.
3. The director ~~shall~~ may establish an office of transportation planning to administer the department's authority and responsibilities for planning all surface modes of transportation, budgeting, development of programs and projects, data collection and management, and research. Coordination must be established between the aeronautics commission planning section and the department of transportation office of planning for airport development as it pertains to surface access.

SECTION 2. AMENDMENT. Section 24-02-42 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-42. Engineering, management, and technician scholarships authorized. The commissioner is hereby authorized to establish not over sixteen continuing ~~scholarships~~ grants of financial aid for study in civil engineering, civil engineering technology, construction engineering, construction management, and industrial drafting and design technology at institutions of higher learning in this state. Expenditure of not over ten thousand dollars annually from highway operating funds is hereby authorized. No individual shall receive ~~scholarship payments~~ financial aid in any year exceeding ~~eight hundred one thousand~~ one thousand dollars nor a total exceeding

~~twenty four hundred three thousand~~ dollars and an executed contract of employment shall be a prerequisite. Before any student shall receive the benefits authorized by this section ~~he~~ the student shall enter into a contract with the department, which shall provide that such student shall upon graduation accept employment with the department for a period of time at least equal to the time ~~he~~ the student received ~~scholarship~~ financial aid benefits, the salary to be in the grade established for the classification assigned. In the event such student shall be inducted into the armed forces before graduation, such education may then be completed upon ~~his~~ that student's return to civil life, and in the event such induction into the armed services is made after graduation the employment contract shall not take effect until after such period of service in the armed forces has been completed. Leave of absence without pay will be granted to one whose induction occurs during the period of the life of such contract and the employment will be resumed for the balance of the contract period after such employee has been discharged from the service.

If such student fails to graduate with a degree, or fails to accept employment with the department as above provided, such student shall repay the department, with interest at the rate of six percent per annum, all sums received by ~~him~~ the student in ~~scholarship~~ financial aid benefits under the contract herein provided, such repayment to be made within a period equal to the time ~~he~~ the student received such benefits. For the purpose of this section defenses of minority or statute of limitations are hereby removed as to any applicant granted a loan by the commissioner and such contracts shall in all respects be legal and binding. Salary increases to employees having received ~~scholarships~~ financial aid by virtue of this section shall be based on the same considerations as other engineers employed by the department.

The commissioner, with the cooperation and concurrence of the board of higher education, shall prescribe rules for determining the selection of recipients, qualifications, and courses of study. Such rules may cover any areas as may be necessary to assure a source of qualified technically trained employees for the department.

SECTION 3. AMENDMENT. Subsections 1, 2, and 4 of section 57-15-06.3 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The board of county commissioners of any county may prepare a proposed county construction program of farm-to-market and federal-aid roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of the program by the state department of transportation ~~and the federal highway administration~~, the board may submit the program to the electors of the county with the question of levying a tax not exceeding the limitation in subsection 17 of section 57-15-06.7 for the completion of the program by matching, from the proceeds of the tax, federal funds available for federal-aid, secondary and feeder roads, farm-to-market roads, and all roads as provided for under federal-aid highway acts. If the majority of the electors voting on the question approved the program and levy, the board shall levy a tax not in excess of fifteen mills.

2. If the board of county commissioners determines that a substantial change is necessary in the details of the program of farm-to-market and federal-aid roads previously approved by the electors of the county, the board shall set a date for a public hearing on the proposed amendment to the program. Notice ~~shall~~ must be published in the official newspaper of the county once a week for three consecutive weeks before the date of public hearing. The board, after approval of the amendment by the state department of transportation ~~and the federal highway administration~~, may officially amend the program. The program, as amended by the board, ~~shall become~~ becomes the official county road program.
  
4. Any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time the proceeds may become available, for providing paved or any other type of road surfacing on, or for maintenance of, roads included within the county road program for which the tax levy was originally made or for any new project included in an amended program.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 290

SENATE BILL NO. 2115  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### PLANT PEST CONTROL

AN ACT to create and enact two new subsections to section 24-05-20 of the North Dakota Century Code, relating to grasshopper control and other plant pest control programs in township and county road rights of way; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 24-05-20 of the North Dakota Century Code are created and enacted as follows:

The governing body of a township or a county may control, or cause to be controlled, grasshoppers and other plant pests which are infesting vegetation in the road rights of way under their authority. Only pesticides that are labeled for use on forage crops may be used so that the forage may be cut and used for hay. At least three days prior to treatment, the governing body of the township or county shall provide written notice to all of the landowners or tenants, or both, of all land adjacent to the rights of way to be treated. The notice must include the approximate date of treatment, the name of the pesticide that will be used, and any restrictions on the harvest and use of the treated forage. If a landowner or occupant of land adjacent to the road right of way to be treated gives notice opposing the treatment to the governing body of the township or county prior to the treatment date that section of the right of way must be excluded from treatment. The landowner or tenant of the land is responsible for clearly marking or flagging the section of the right of way to be excluded from treatment.

The governing body of a county may enter into agreements with the department of transportation for the purpose of controlling grasshoppers and other plant pests in state highway system rights of way. The governing body of a township may enter into agreements with the governing body of a county for controlling grasshoppers and other plant pests in rights of way of the county road system. The governing body of a county may use the county emergency fund, as provided for in section 57-15-28 to pay for the cost of control in rights of way of the county road system. The county emergency fund may also be used to cost share with townships for control expenses in township rights of way. The electors of an organized township may appropriate funds as provided for in section 57-15-19 for controlling grasshoppers and other plant pests in rights of way controlled by the township.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund in the state treasury, not otherwise appropriated, the sum of \$115,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of participating in the cooperative rangeland grasshopper control program for the period beginning with the effective date of this Act and ending June 30, 1993.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 291

HOUSE BILL NO. 1381  
(Williams)

### COUNTY ROAD ENCROACHMENT

AN ACT to create and enact a new section to chapter 24-05 of the North Dakota Century Code, relating to liability for damages for encroachment upon county roads.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-05 of the North Dakota Century Code is created and enacted as follows:

Encroachment upon county roads, ditches, approaches - Liability for damages. A landowner who encroaches upon a county road or its ditches or approaches must be given notice by the board of commissioners for that county that the encroachment has been discovered. If the landowner fails to remedy the encroachment within twenty days after receiving the notice, that landowner is liable to the county for damages resulting from the encroachment. The board of commissioners for that county shall issue to the landowner written notice of the amount of damages determined to be a result of the encroachment. If the landowner fails to pay the county for the damages, the expense of the repair must be charged to the land of the landowner. The expenses charged become a part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes are collected, and placed to the credit of the county that incurred the expense of the repair.

Approved April 16, 1991  
Filed April 18, 1991



# MENTALLY ILL, TUBERCULAR, BLIND, AND DEAF

## CHAPTER 292

SENATE BILL NO. 2118  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### STATE HOSPITAL AND MENTAL HEALTH

AN ACT to create and enact a new section to chapter 25-02, a new subdivision to subsection 8 of section 25-03.1-02, and a new section to chapter 25-03.1 of the North Dakota Century Code, relating to maintenance of state hospital accreditation, definition of a mental health professional, and court-authorized involuntary treatment with prescribed medication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-02 of the North Dakota Century Code is created and enacted as follows:

Maintenance of state hospital accreditation. The department of human services shall seek appropriations and resources sufficient to ensure maintenance of the state hospital's accreditation by the joint commission on accreditation of health care organizations and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing hospital standards recognized by the health care industry and accepted by the department.

SECTION 2. A new subdivision to subsection 8 of section 25-03.1-02 of the North Dakota Century Code is created and enacted as follows:

A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

SECTION 3. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Court authorized involuntary treatment with prescribed medication.

1. Upon advance notice to the court and the parties, a treating psychiatrist may request authorization from the court to treat a patient with prescribed medication in an involuntary treatment hearing if the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient certify:

- a. That prescribed medication is clinically appropriate and necessary to effectively treat the patient;
- b. That the patient was offered such treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about such treatment; and
- c. That the prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient.
- d. That the benefits of the treatment outweigh the known risks to the patient.

The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

2. Evidence of the factors certified under subsection 1 may be presented to the court at an involuntary treatment hearing held pursuant to sections 25-03.1-19 and 25-03.1-22. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
  - a. The danger the patient presents to self or others;
  - b. The patient's current condition;
  - c. The patient's past treatment history;
  - d. The results of previous medication trials;
  - e. The efficacy of current or past treatment modalities concerning the patient;
  - f. The patient's prognosis; and
  - g. The effect of the patient's mental condition on the patient's capacity to consent.

Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of facility staff or for the purpose of punishment.

3. If the factors certified under subsection 1 have been demonstrated by clear and convincing evidence, the court may include in its involuntary treatment order a provision authorizing the treating psychiatrist to involuntarily treat the patient with prescribed medication on such terms and conditions as are appropriate. However, no such provision is effective for more than ninety days, unless prior to the expiration of that time period the treating psychiatrist submits a report to the court indicating that the involuntary treatment with prescribed medication remains

appropriate and necessary to effectively treat the patient. Based on such reports, a review of the patient's progress, and the patient's concerns, the court may extend its authorization for involuntary treatment with prescribed medication for additional ninety-day periods if the patient remains under an involuntary treatment order.

4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the treating psychiatrist has requested authorization for involuntary treatment with prescribed medication, only a licensed physician or psychiatrist may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 293

SENATE BILL NO. 2372  
(Senators Nething, Marks)  
(Representatives Williams, Kroeber, Trautman)

### COMMITMENT PROCEDURES

AN ACT to create and enact two new subsections to section 25-03.1-02 of the North Dakota Century Code, relating to definitions of commitment procedures; and to amend and reenact subsection 14 of section 25-03.1-02 and section 25-03.1-43 of the North Dakota Century Code, relating to definitions used in commitment procedures and the confidentiality of records of patients in a treatment facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14. "Superintendent" means the state hospital superintendent or the superintendent's designee.

SECTION 2. Two new subsections to section 25-03.1-02 of the North Dakota Century Code are created and enacted as follows:

"Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.

"Third party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third party payer.

\* SECTION 3. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records are available to the court

\* NOTE: Section 25-03.1-43 was also amended by section 8 of Senate Bill No. 2245, chapter 592.

and, under regulations established by the department, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.
3. Persons legally representing the patient, upon proper proof of representation and unless the patient specifically withholds consent.
4. Persons authorized by a court order.
5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, the patient's consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.
6. The director of institutions in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime, provided such disclosures are directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances of the incident, the name and address of the patient involved, and such patient's last known whereabouts.
8. Qualified service organizations and third party payers to the extent necessary to perform their functions.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 294

HOUSE BILL NO. 1410  
(Representatives D. Olsen, Gorder, Skjerven)  
(Senator Tallackson)

### DEVELOPMENTAL CENTER ACCREDITATION AND RESIDENCY

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to accreditation of the developmental center at Grafton; and to amend and reenact sections 25-04-01, 25-04-02, 25-04-04, 25-04-05, 25-04-06, 25-04-07, 25-04-08, 25-04-08.1, 25-04-11, and 25-04-11.1 of the North Dakota Century Code, relating to who may receive services from the developmental center at Grafton.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-04-01 of the North Dakota Century Code is amended and reenacted as follows:

25-04-01. Developmental center - Name - Administration and control. A facility for developmentally disabled persons must be maintained at or near the city of Grafton in Walsh County. The facility must also be available for a person who is determined to be a person who may benefit from the facility's services. The facility must be known and designated as the developmental center at Grafton. The department of human services has administrative authority and control of the developmental center at Grafton.

SECTION 2. AMENDMENT. Section 25-04-02 of the North Dakota Century Code is amended and reenacted as follows:

25-04-02. Purpose of developmental center at Grafton. The developmental center at Grafton must be maintained for the relief, instruction, care, and custody of the developmentally disabled of this state or other persons who may benefit from the services offered at the center. For this purpose the department of human services may introduce and establish such trades and manual industries as in its judgment will best prepare the residents for future self-support.

SECTION 3. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Accreditation of developmental center. The department of human services shall request appropriations and resources sufficient to ensure maintenance of the developmental center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration or by similar accrediting and certifying organizations and agencies possessing standards applicable to handicapped individuals and disciplines needed to provide quality services to individuals served.

SECTION 4. AMENDMENT. Section 25-04-04 of the North Dakota Century Code is amended and reenacted as follows:

25-04-04. Who may receive benefits of developmental center. Subject to this chapter and to any rules adopted by the department of human services, the benefits of the developmental center at Grafton may be received by **persons who are residents of this state and who are:**

1. Developmentally disabled persons and other persons who may benefit from services provided at the developmental center who, in the opinion of the superintendent of the developmental center at Grafton, are of suitable age and capacity to receive instruction in the center and whose deficiencies prevent them from receiving proper training and instruction in the public schools; or
2. Developmentally disabled, persons and other persons who may benefit from services provided at the developmental center, who cannot be properly cared for in their homes or other available facilities.

Residents and nonresidents of this state may receive the benefits of the developmental center. Priority, however, must be given to residents of this state with developmentally disabled persons receiving first priority.

\* SECTION 5. AMENDMENT. Section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

25-04-05. Qualifications for admission to state facility - Temporary admission - Care and treatment of persons under twenty-one years of age without charge.

1. The superintendent may admit a **developmentally disabled person who is a resident of this state** to the developmental center at Grafton or other state facility under the superintendent's jurisdiction or the jurisdiction of the department of human services when all of the following conditions have been met:
  - a. Application for admission has been made on behalf of the **developmentally disabled** person by a parent or guardian or the person or agency having legal custody, or by the **developmentally disabled** person seeking admission, in accordance with procedures established by the department of human services.
  - b. A comprehensive evaluation of the person seeking admission has been made within three months of the date of application, a report of which has been filed with the superintendent and which, together with such other information or reviews as the department of human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission to the developmental center at Grafton or other state facility.
  - c. The person may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted by the department of human services.

\* NOTE: Section 25-04-05 was also amended by section 1 of Senate Bill No. 2121, chapter 295.

2. The superintendent may admit to the developmental center at Grafton or any other state facility under the superintendent's jurisdiction or the jurisdiction of the department of human services, temporarily for the purposes of observation, without commitment, under rules as the department of human services may adopt, any person who is suspected of being developmentally disabled able to benefit from the services offered at the center, to ascertain whether or not such that person is actually developmentally disabled and a proper case for care, treatment, and training in the state facility. If in the opinion of the superintendent the person temporarily admitted to the developmental center at Grafton is a proper subject for institutional care, treatment, and training at such center or facility, such that person may remain as a voluntary resident at such center at the discretion of the superintendent if all other conditions for admission required by this section are met.
  
3. Care and treatment at the developmental center at Grafton must be provided without charge to anyone under twenty-one years of age who is qualified for admission pursuant to this chapter. Residents not more than twenty-one years of age admitted to the developmental center at Grafton are entitled to transportation as provided by rules of the superintendent of public instruction. The rules have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. Persons over twenty-one years of age who are qualified for admission pursuant to this chapter are responsible for expenses charged for care and treatment at the developmental center at Grafton in the manner provided by this chapter.

SECTION 6. AMENDMENT. Section 25-04-06 of the North Dakota Century Code is amended and reenacted as follows:

25-04-06. Juvenile court commitment of dependent, neglected, or delinquent mentally deficient - Commitment for observation - Appeal. In any proceeding instituted in juvenile court, the court may make an order committing the child to the developmental center at Grafton whenever it appears to the satisfaction of the court that the child involved in the proceeding is:

1. Dependent and developmentally disabled a candidate for services at the developmental center;
2. Neglected and developmentally disabled a candidate for services at the developmental center; or
3. Delinquent and developmentally disabled a candidate for services at the developmental center.

If the court is in doubt as to whether the child is developmentally disabled a candidate for services offered at the developmental center, the court may make an order committing the child to the developmental center at Grafton for observation only by the authorities of such institution. If it is



ascertained as a result of such observation that the child is ~~developmentally disabled~~ a candidate for services offered at the developmental center, a report to such effect must be made by the authorities of the developmental center at Grafton to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be ~~developmentally disabled~~ in need of these services. Notice of such the hearing must be given to the parents, custodian, or guardian of such child in the manner prescribed by law for the giving of notice in other proceedings in juvenile court. Upon such hearing, the court shall make such order as it may deem proper. Any parent, custodian, guardian, or other person charged with the control of such child may take an appeal from the order made by the court in the manner now prescribed by law for the taking of appeals from decisions of the juvenile court. The procedure provided in this section is not exclusive but is in addition to other procedures provided in this chapter for the commitment of ~~developmentally disabled~~ children to the developmental center at Grafton.

\* SECTION 7. AMENDMENT. Section 25-04-07 of the North Dakota Century Code is amended and reenacted as follows:

25-04-07. ~~Developmentally disabled~~ Disabled defendants.

1. When in any cause, other than a proceeding before the juvenile court, it appears that a defendant may be ~~developmentally disabled~~ to such an extent that the defendant is unable to confer effectively with counsel or to participate adequately in the defendant's defense, this issue must be adjudicated in accordance with the procedures provided for in chapter 12.1-04. When any person has been adjudicated unfit to stand trial by reason of being ~~developmentally disabled~~ as provided by this chapter, the court shall initiate a process for the determination of mental incompetency, or for a joint determination of incompetency and defective delinquency as provided hereinafter. If incompetency is established, the court shall appoint an appropriate guardian of the person.
2. If the defendant's condition and behavior is such that it appears to the court that the defendant may be not only incompetent, but may also constitute a continuing peril to the life, person, or property of others, the court may order the defendant's admission and temporary detention for a period not to exceed thirty days in a state institution or facility suitable to receive such persons. Prior to the expiration of the order a report must be transmitted to the court in accordance with this directive, which report must include recommendations concerning the nature and extent of the defendant's ~~developmental~~ disability, the extent to which the individual is able to manage himself and his affairs with ordinary prudence, and the extent and character of any propensity toward aggravated antisocial behavior such as might substantiate a finding of defective delinquency.
3. The court may thereupon conduct a hearing on the joint question of incompetency and defective delinquency, with due notice to all interested parties in the manner provided for in chapter 30.1-28. The court may hear the matter or may order a jury trial. A jury trial must be had if demanded by the defendant or someone on the defendant's behalf.

\* NOTE: Section 25-04-07 was repealed by section 5 of Senate Bill No. 2430, chapter 121.

4. If the defendant is found competent, the defendant must be discharged. If the defendant is found to be incompetent, but not a defective delinquent, the court shall appoint an appropriate guardian of the person. If the defendant is found to be a defective delinquent, the court shall appoint an appropriate guardian and may, in addition, issue an order placing the defendant in the developmental center at Grafton or other appropriate state facility.
5. Any parent, custodian, guardian, or other person charged with the control of such defendant may take an appeal from the order made by the court in the manner provided by law. The procedure provided in this section is not exclusive but is in addition to any other procedure for the commitment of ~~developmentally~~ disabled persons to the developmental center or other state facility.

SECTION 8. AMENDMENT. Section 25-04-08 of the North Dakota Century Code is amended and reenacted as follows:

25-04-08. Discharge of resident from institution. A ~~developmentally disabled~~ person who has been admitted as a resident must be permanently discharged within thirty days under any one of the following conditions:

1. The superintendent, on the basis of a comprehensive evaluation, finds that the care, treatment, training, rehabilitation, and supervision offered by the state are no longer required.
2. The parent or guardian who voluntarily committed his child or ward as a resident and who retains legal custody makes a written request for discharge.
3. The ~~developmentally disabled~~ person is admitted on indefinite transfer to a hospital, school, or other facility, or a protective service under the jurisdiction of another state, or another agency or department of this state; provided, however, that if such admission be by contractual arrangement made by the department of human services, the ~~developmentally disabled~~ person must be placed on nonresident release status, but not discharged.
4. A court of competent jurisdiction orders the discharge of the ~~developmentally disabled~~ person.

Any person who is to be discharged under subsection 2 or 4 shall first receive a comprehensive evaluation unless such evaluation is not completed within thirty days of the request for discharge.

\* SECTION 9. AMENDMENT. Section 25-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-08.1. Notification prior to discharge. Prior to discharge the superintendent shall consult with the parent or guardian of the person ~~of the developmentally disabled person to be discharged~~, or with the court which ordered the commitment, and shall notify the director of the county social service board of the county wherein it is proposed that such person will assume residence and shall also notify the executive director of the department of human services.

\* NOTE: Section 25-04-08.1 was also amended by section 10 of Senate Bill No. 2068, chapter 54.

SECTION 10. AMENDMENT. Section 25-04-11 of the North Dakota Century Code is amended and reenacted as follows:

25-04-11. Disposition of ~~developmentally disabled~~ person who is not a legal resident. If a person who has no legal residence in this state is subject to admission to the developmental center at Grafton or other appropriate state facility, by order of a court of competent jurisdiction, such person must be sent, at the expense of the county, to the developmental center at Grafton in the same manner as a resident of this state who is found to be ~~developmentally disabled in need of services offered at the developmental center~~, and the superintendent of the developmental center at Grafton shall then arrange for the transportation of such person to the place where the person belongs. The department of human services shall ascertain the place where such person belongs when the same conveniently can be done.

SECTION 11. AMENDMENT. Section 25-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-11.1. Disposition of nonresidents - Exceptions - Reciprocal agreements. If a person who has no legal residence in this state or whose residence is unknown is found to be a person requiring care and treatment in the developmental center at Grafton, the person must be sent to the developmental center in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The supervising department shall immediately inquire as to the residence of the person or the person's responsible relatives, and, if the residence is found to be in another state or country, the supervising department shall arrange for transportation of the person to the place of legal residence or legal settlement unless the person can be accommodated at the developmental center without depriving a North Dakota resident of care and treatment at the developmental center and adequate costs of care are paid for within a reasonable time, or unless a reciprocal agreement has been entered into with another state regarding the care and commitment of the nonresident. The supervising department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of ~~developmentally disabled~~ persons who are within one state but have legal residence or legal settlement in another state. The agreements may not contain any provision conflicting with any law of this state.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 295

SENATE BILL NO. 2121  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

### DEVELOPMENTAL CENTER PATIENT FREE EDUCATION

AN ACT to amend and reenact sections 25-04-05, 25-04-14, and 25-04-16 of the North Dakota Century Code, relating to the provision of free educational services to developmental center patients who are twenty-one years of age or younger and to provide for the waiver of fees and expenses upon application by a parent of a patient or former patient under age eighteen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 25-04-05 of the North Dakota Century Code is amended and reenacted as follows:

25-04-05. Qualifications for admission to state facility - Temporary admission - care and treatment of Educational or related services without charge for persons under twenty-one years of age without charge and under.

1. The superintendent may admit a developmentally disabled person who is a resident of this state to the developmental center at Grafton ~~or other state facility under the superintendent's jurisdiction or the jurisdiction of the department of human services~~ when all of the following conditions have been met:
  - a. Application for admission has been made on behalf of the developmentally disabled person by a parent or guardian or the person or agency having legal custody, or by the developmentally disabled person, in accordance with procedures established by the department of human services.
  - b. A comprehensive evaluation of the person has been made within three months of the date of application, a report of which has been filed with the superintendent and which, together with such other information or reviews as the department of human services may require, indicates to the superintendent's satisfaction that the person is eligible for admission to the developmental center at Grafton ~~or other state facility~~.
  - c. The person may be admitted without exceeding the resident capacity of the facility as specified in the professional standards adopted by the department of human services.
2. The superintendent may admit to the developmental center at Grafton ~~or any other state facility under the superintendent's jurisdiction or the jurisdiction of the department of human services~~, temporarily for the purposes of observation, without commitment,

\* NOTE: Section 25-04-05 was also amended by section 5 of House Bill No. 1410, chapter 294.

under rules as the department of human services may adopt, any person who is suspected of being developmentally disabled, to ascertain whether or not such person is actually developmentally disabled and a proper case for care, treatment, and training in the state facility. If in the opinion of the superintendent the person temporarily admitted to the developmental center at Grafton is a proper subject for institutional care, treatment, and training at such the center or facility, such person may remain as a voluntary resident at such center at the discretion of the superintendent if all other conditions for admission required by this section are met.

3. Care and treatment at the developmental center at Grafton must be provided without charge to anyone under twenty-one years of age who is qualified for admission pursuant to this chapter. Residents not more than twenty-one years of age admitted to the developmental center at Grafton are entitled to transportation as provided by rules of the superintendent of public instruction. The rules have the force and effect of law on other state agencies and public school districts. The school district of which the applicant is a resident must be reimbursed by the state special education fund for not more than the number of round trips home per year provided for in the individualized education program at a rate not to exceed that paid state officials. Persons over twenty-one years of age who are qualified for admission pursuant to this chapter are responsible for expenses charged for care and treatment at the developmental center at Grafton in the manner provided by this chapter. Notwithstanding any other provision of this chapter, no handicapped patient, twenty-one years of age or under, or the estate or the parent of such patient, may be charged for educational or related services provided at the developmental center at Grafton. Except as provided in subsection 4, the department of human services has prior claim on all benefits accruing to such patients for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workers' compensation, or medical care and disability programs. For purposes of this subsection, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services other than medical and medically related services must be paid by the developmental center at Grafton, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department of human services, the school district of residence, and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each agency and political subdivision is liable. The department of public instruction may adopt rules necessary to implement this section.
4. Parents of a handicapped patient, twenty-one years of age or under, are not required to file, assist in filing, agree to filing, or assign an insurance claim when filing the claim would pose a

realistic threat that the parents would suffer a financial loss not incurred by similarly situated parents of nonhandicapped children. Financial losses do not include incidental costs such as the time needed to file or assist in filing an insurance claim or the postage needed to mail the claim. Financial losses include:

- a. A decrease in available lifetime coverage or any other benefit under an insurance policy.
- b. An increase in premiums or the discontinuation of a policy.
- c. An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim unless the developmental center pays or waives the out-of-pocket expense.

SECTION 2. AMENDMENT. Section 25-04-14 of the North Dakota Century Code is amended and reenacted as follows:

25-04-14. Expenses chargeable against patient or patient's estate - Filing claims. Expenses for care and treatment of each patient ~~over twenty one years of age~~ at the developmental center at Grafton must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's ability to pay which must include an estimate of potential future receipts including amounts from estates. The supervising department shall recover from the patient or from a discharged patient expenses chargeable for care and treatment. If any patient is receiving social security benefits or is a veteran or a dependent of a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, the expenses are a current claim against the patient and may be recovered monthly by the supervising department except that any amount required by the payor of the benefits to be paid directly to the patient must, upon approval of the department of human services, be credited to the patient's personal account from any money thus received.

SECTION 3. AMENDMENT. Section 25-04-16 of the North Dakota Century Code is amended and reenacted as follows:

25-04-16. Waiver of payment - Use of income tax data - Confidentiality - Definition.

1. The patient, former patient, parent of a patient or former patient under age eighteen, personal representative, or guardian may make application to the supervising department to pay less than the costs or none of the costs incurred by the state for the patient's care and treatment at the developmental center at Grafton. Such An application from a patient, former patient, personal representative, or guardian must be accompanied by proof of the patient's or the estate of the patient's inability to pay. An application from a parent of a patient or former patient must be accompanied by proof that the parent has applied for or cooperated fully in an application for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, workers' compensation, or medical care and disability programs for provision of services to the patient, and has assured the contribution of those services, compensation, and

contract and program benefits to meet the cost of care provided to the patient by the developmental center at Grafton. A waiver must be granted upon receipt of an application from such a parent, which is complete and supported by the required proofs and is effective for so long as the parent continues to apply for or cooperate fully in applications for services, compensation, and contract and program benefits, and continues to assure the contribution of those services, compensation, and benefits to meet the costs of care. A waiver, once granted, with respect to a patient under age eighteen, extinguishes any debt that would otherwise be owed by the patient, the patient's parents, or the patient's estate with respect to care and treatment furnished during times the waiver is effective.

2. Upon receipt of such application, the supervising department shall direct the county social service board of the county from which the patient was admitted to determine whether the ~~patient; former patient; or the patient's estate is able to pay all; a portion; or none of the expenses incurred by the state for such patient's care and treatment~~ application is complete and supported by the required proofs. The supervising department shall approve, reject, or amend the determination made by the county social service board. The determination made by the supervising department may be appealed to the district court of the county of residence of the patient.
3. Any patient, former patient, parent of a patient or former patient, guardian, or personal representative who seeks relief from the payment of the cost of care and treatment by filing an application for relief of payment shall do so with the understanding that the supervising department may, in its discretion, and to its satisfaction, verify any statement made in such application for relief of payment by a request for information from financial institutions, including commercial banks, and from other sources likely to possess verifying information. Notwithstanding the provisions of section 57-38-57, this verification may include a review of such applicant's state income tax return or any other document or report submitted to or held by any office or department of the state of North Dakota or any of its political subdivisions.
- ~~2-~~ 4. When any official or employee of the developmental center who, pursuant to subsection 1, obtains income tax information or other tax information from the state tax commissioner the confidentiality of which is protected by law, such official or employee may not divulge such information except to the extent necessary for the administration of this chapter or when otherwise directed by judicial order or when otherwise provided by law.
- ~~3-~~ 5. As used in this chapter, "supervising department" means the department of human services.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 296

SENATE BILL NO. 2392  
(Stenehjem)

### SCHOOL FOR THE DEAF SUPERINTENDENT

AN ACT to amend and reenact section 25-06-03 of the North Dakota Century Code, relating to the superintendent of the school for the blind.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-06-03 of the North Dakota Century Code is amended and reenacted as follows:

25-06-03. Superintendent to possess certain qualifications. The superintendent of the school for the blind, ~~who shall also act as superintendent of the school for the deaf,~~ must possess those qualifications, educational and otherwise, as in the opinion of the superintendent of public instruction may qualify that person to instruct and minister to the needs of blind ~~and deaf~~ persons.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 297

SENATE BILL NO. 2110  
(Committee on Education)  
(At the request of the Superintendent of Public Instruction)

### SCHOOL FOR THE DEAF MISSION

AN ACT to amend and reenact sections 25-07-02, 25-07-04, and 25-07-06 of the North Dakota Century Code, relating to the special duties of the superintendent at the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-07-02 of the North Dakota Century Code is amended and reenacted as follows:

25-07-02. Superintendent - Special duties. The superintendent of the school for the deaf ~~shall~~ may also act as superintendent of the school for the blind.

SECTION 2. AMENDMENT. Section 25-07-04 of the North Dakota Century Code is amended and reenacted as follows:

25-07-04. Qualifications for admission to school for deaf - Residents of state entitled to free education. To be admitted as a pupil in the school for the deaf, an applicant's hearing must be impaired to such extent that the applicant cannot make suitable progress in the public schools of the state. The superintendent, with the approval of the superintendent of public instruction, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person may be admitted to the institution until the application giving that information that the superintendent of public instruction requires has been returned to and approved by the superintendent. An applicant admitted to the school must be furnished transportation by the school as provided in the student's individualized education program at the most economical rate possible, and yet meet the student's needs. Each applicant who is a resident of this state and who, because of hearing impairment, is unable to receive an education in the public schools, is entitled to receive an education in the school for the deaf at the expense of the state. The North Dakota school for the deaf serves deaf or hearing impaired children from birth through age twenty-one. The North Dakota school for the deaf shall furnish application blanks upon request and no child will be admitted until application is completed and approved. Students enrolled must be furnished transportation by the school for the deaf as indicated in the student's individual education plan. All deaf or hearing impaired children who are residents of the state are entitled to receive special education and related services based on a completed individual education program, which considers the academic, independent living skills, vocational, recreational, and leisure needs of each child.

SECTION 3. AMENDMENT. Section 25-07-06 of the North Dakota Century Code is amended and reenacted as follows:

25-07-06. Instruction at school for deaf. The superintendent of the school for the deaf shall provide an educational program that is designed to give deaf children a usable and understandable language by which they are able to give and to receive ideas; to converse with other deaf persons; to understand the printed page; and to express themselves understandably by correspondence. Every effort to teach speech and speech reading must be made. Every boy and girl must also be provided with instruction in prevocational or vocational subjects special education and related services designed to meet the unique needs of deaf or hearing impaired students according to individual education programs as required by federal and state laws and regulations.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 298

SENATE BILL NO. 2522  
(Senators Goetz, Satrom)  
(Representatives Rydell, Wardner)

**GALACTOSEMIA TESTING**

AN ACT to create and enact a new section to chapter 25-17 of the North Dakota Century Code, relating to the adoption of rules by the department of health and consolidated laboratories with respect to recovering the costs of galactosemia testing; and to amend and reenact sections 25-17-01, 25-17-02, 25-17-03, and 25-17-04 of the North Dakota Century Code, relating to testing of newborn babies for galactosemia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

25-17-01. Phenylketonuria and galactosemia education programs and tests. The state department of health and consolidated laboratories shall:

1. Develop and carry out an intensive educational program among physicians, staffs of hospitals, public health nurses, and the citizens of this state concerning the ~~disease~~ diseases phenylketonuria and galactosemia, and other metabolic diseases causing mental retardation for which appropriate methods of detection, prevention, or treatment are available. This educational program must include information about the nature of the diseases and examinations for the early detection of such diseases in order that proper measures may be taken to prevent mental retardation.
2. Provide on a statewide basis screening, diagnostic, and treatment control tests for which approved laboratory procedures are available for phenylketonuria, galactosemia, and other metabolic diseases causing mental retardation.

SECTION 2. AMENDMENT. Section 25-17-02 of the North Dakota Century Code is amended and reenacted as follows:

25-17-02. Establishment of testing regulations — ~~Approval of laboratories and personnel.~~ The state department of health and consolidated laboratories shall establish standards and methods of testing to be employed and for the determination of the ~~above-referred~~ above-referred diseases; ~~in addition to phenylketonuria;~~ referred to in section 25-17-01 for which statewide testing programs are ~~to be~~ established.

SECTION 3. AMENDMENT. Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

25-17-03. Treatment for positive diagnosis - Registry of cases. The state department of health and consolidated laboratories shall:

1. Follow up all cases with positive tests for phenylketonuria, galactosemia, and other metabolic diseases with the attending physician in order to determine the exact diagnosis.
2. Make arrangements for the necessary treatment for diagnosed cases where treatment is indicated and the family is unable to pay the cost of such treatment.
3. Maintain a registry of cases of phenylketonuria, galactosemia, and other metabolic diseases for the purpose of followup services to prevent mental retardation.

SECTION 4. AMENDMENT. Section 25-17-04 of the North Dakota Century Code is amended and reenacted as follows:

25-17-04. Physician to initiate test and report positive diagnosis. The physician attending a newborn child shall cause ~~such that~~ child to be subjected to a testing for phenylketonuria test, as well as other tests for errors of metabolism, galactosemia, and other metabolic diseases, in the manner prescribed by the state department of health and consolidated laboratories. A physician attending a case of phenylketonuria, galactosemia, or other metabolic disease which may cause mental retardation shall report ~~such the~~ case to the state department of health and consolidated laboratories. ~~The provisions of this~~ This section ~~do~~ does not apply if the parents of ~~such~~ a child object thereto on the grounds that ~~such test testing for metabolic diseases~~ conflicts with their religious tenets and practices.

SECTION 5. A new section to chapter 25-17 of the North Dakota Century Code is created and enacted as follows:

Testing charges. The department of health and consolidated laboratories shall adopt rules that establish reasonable fees and may impose those fees to cover the costs of administering tests under this chapter. All fees collected must be deposited in the department of health and consolidated laboratories operating account.

Approved April 3, 1991  
Filed April 4, 1991

# INSURANCE

## CHAPTER 299

HOUSE BILL NO. 1439  
(Whalen, Aarsvold, Wald, Skjerven)

### PETROLEUM RELEASE REMEDIATION

AN ACT to provide for cleanup of petroleum spills through the establishment of a petroleum release compensation fund; to repeal sections 1 through 31 and section 33 of chapter 341 of the 1989 Session Laws of North Dakota; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. The purpose of this Act is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment or that a contractor has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation advisory board.
4. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term also includes compensation paid to third parties for bodily injury or property damage which is determined by the board to be eligible for reimbursement. The term does not include the repair or replacement of equipment or preconstructed property.
5. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
6. "Department" means the state department of health and consolidated laboratories.

7. "Fund" means the petroleum release compensation fund.
8. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this Act.
9. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
10. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
11. "Petroleum" means any of the following:
  - a. Gasoline and petroleum products as defined in chapter 19-10.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
12. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
13. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
  - a. Tanks owned by the federal government;
  - b. Tanks used for the transportation of petroleum; and
  - c. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968.
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
  - d. A farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less used for storing motor fuel for noncommercial purposes.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.

- g. A flowthrough process tank.
- h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.
- j. A tank used for the storage of propane.
- k. A tank used to fuel rail locomotives or surface coal mining equipment.

SECTION 3. Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of three members, two of whom are active in petroleum marketing, appointed by the governor. Members must be appointed to terms of three years with the terms arranged so that the term of one member expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. Administration of fund - Staff. The administrator shall administer the fund according to this Act. The administrator shall convene the board as is necessary to keep the board apprised of the fund's general operations and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation.

SECTION 5. Adoption of rules. The administrator shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 6. Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. Duty to notify. Nothing in this Act limits any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this Act.

SECTION 10. Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 10 of this Act; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 10 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, and for legal actions of the administrator or the department. This Act does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. Other remedies. Nothing in this Act limits the powers of the administrator or department, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.



SECTION 15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 17 of this Act;
2. Any money recovered by the fund under section 23 of this Act, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. Penalty. A tank owner violating section 17 of this Act is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 17. Registration fee. An owner or operator of a tank shall pay an annual registration fee of seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 18. Reimbursement for corrective action. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:

1. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
2. The department was given notice of the release as required by federal and state law;
3. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
4. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

SECTION 19. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 18 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after the effective date of this Act.

SECTION 20. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

SECTION 21. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 22. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 23. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the amount allowed by section 18 of this Act, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 24. Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this Act exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 25. Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within forty-eight hours of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall

notify the administrator within forty-eight hours of the demand or the negotiations.

3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

**SECTION 27. Third-party damages - Documentation.**

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment, abstract of costs, and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.

**SECTION 28. Matching federal funds.** The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

**SECTION 29. Report to legislative assembly and governor.** The administrator and the board shall prepare by December 1, 1992, a report to the legislative assembly and the governor explaining the status of the government's and business' ability to respond to and clean up all past and future petroleum spills.

**SECTION 30. Fund appropriations.** Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this Act.

SECTION 31. REPEAL. Sections 1 through 31 and section 33 of chapter 341 of the 1989 Session Laws of North Dakota are repealed.

SECTION 32. APPROPRIATION. There is hereby appropriated out of any moneys in the petroleum release compensation fund in the state treasury generated from the registration fees collected under section 17, not otherwise appropriated, the sum of \$130,000, or so much thereof as may be necessary, to the administrator for the purpose of administering the fund for the period beginning with the effective date of this Act and ending June 30, 1993.

SECTION 33. EXPIRATION DATE. This Act is effective through June 30, 1999, and after that date is ineffective.

SECTION 34. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 300

SENATE BILL NO. 2383  
(Senator Marks)  
(Representatives Brokaw, Dalrymple, Gerntholz)

### PETROLEUM RELEASE VERIFICATION

AN ACT to amend and reenact section 23 of chapter 341 of the 1989 Session Laws of North Dakota, relating to reimbursement under the petroleum release compensation fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23 of chapter 341 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 23. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 22 of this Act. An owner or operator may be reimbursed only for releases ~~discovered and reported in writing and verified by the department after the effective date of this Act~~ July 1, 1989.

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

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 301

SENATE BILL NO. 2266  
 (Committee on Industry, Business and Labor)  
 (At the request of the Commissioner of Insurance)

### INSURANCE LAW REVISIONS

AN ACT to create and enact a new subsection to section 26.1-01-07, a new subsection to section 26.1-03-17, and a new section to chapter 26.1-08 of the North Dakota Century Code, relating to fees chargeable by the commissioner of insurance, collection of insurance premium taxes, and the comprehensive health association; to amend and reenact subsections 15 and 16 of section 26.1-01-07, subsection 2 of section 26.1-03-17, sections 26.1-04-11, 26.1-07-04, subdivision c of subsection 2 of section 26.1-10-02, sections 26.1-16-24, 26.1-17-23, 26.1-17-31, 26.1-19-10, 26.1-26-03, subdivision b of subsection 4 of section 26.1-31.2-01 of the North Dakota Century Code as created by section 12 of House Bill No. 1242, as approved by the fifty-second legislative assembly, section 26.1-33-02, subsections 9 and 13 of section 26.1-33-05, sections 26.1-33-12, 26.1-33-37, subdivisions e and o of subsection 1 of section 26.1-36-04, sections 26.1-36-29, 26.1-36-36.2, subsections 1 and 2 of section 26.1-38.1-01, subsections 2, 3, and 4 of section 26.1-38.1-05, subsection 2 of section 26.1-38.1-16, sections 26.1-42-01, 32-12.1-05, and subsection 1 of section 32-12.1-15 of the North Dakota Century Code, relating to fees chargeable by the commissioner of insurance, collection of insurance premium taxes, immunity from prosecution, investments of domestic insurance companies, insurance company annual statement filing date, licensing of sales representatives of nonprofit health service corporations, filing date for annual statements of nonprofit health service corporations, licensing of sales representatives of prepaid legal service organizations, penalty for selling insurance without a license, credit allowed a domestic ceding insurer, solicitation of life insurance, interest on death claims, group life policy conversion privileges, suicide defense to life policy or certificates, accident and health insurance policy provisions, coordination of benefits in individual and group accident and health policies, noncustodial care coverage, life and health insurance guaranty association, property and casualty insurance guaranty association, and purchase of liability insurance and participation in self-insurance pools by political subdivisions and state agencies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-01-07 of the North Dakota Century Code is created and enacted as follows:

For issuing and each annual renewal of a license to an advisory organization, or duplicate thereof, fifty dollars.

SECTION 2. AMENDMENT. Subsections 15 and 16 of section 26.1-01-07 of the North Dakota Century Code are amended and reenacted as follows:

15. For issuing and each annual renewal of a resident insurance broker's, surplus lines insurance broker's ~~and, insurance consultant's, health service corporation sales representative's, and prepaid legal services organization sales representative's~~ license, or duplicate thereof, ten dollars.
16. For issuing and each annual renewal of a nonresident insurance broker's, ~~surplus lines insurance broker's~~ health service corporation sales representative's, prepaid legal services organization sales representative's, and insurance consultant's license, or duplicate thereof, fifteen dollars.

SECTION 3. A new subsection to section 26.1-03-17 of the North Dakota Century Code is created and enacted as follows:

An annual filing fee in the amount of two hundred dollars must be collected by the commissioner from each entity subject to this section. This fee must be reduced by an amount equal to the net tax due under subsections 1 and 2.

\* SECTION 4. AMENDMENT. Subsection 2 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under ~~subsection 1 of section 26.1-38-08~~ 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19 through 26.1-03-22, 26.1-17-32, and 26.1-18-27, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 5. AMENDMENT. Section 26.1-04-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-11. Immunity from prosecution. If any person asks to be excused from attending and testifying or from producing any evidence at any trial or hearing on the ground that the testimony or evidence required may tend to incriminate that person or subject that person to a penalty or forfeiture, but is directed to give the testimony or produce the evidence, that person shall comply with the direction; but no testimony or evidence compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture. That person may not thereafter be prosecuted or

\* NOTE: Section 26.1-03-17 was also amended by section 11 of Senate Bill No. 2068, chapter 54.

subjected to any penalty or forfeiture for or on account of any transaction; matter, or thing concerning which that person may testify or produce evidence pursuant thereto; and no testimony given or evidence produced may be received against that person upon any criminal action, investigation, or proceeding. However, no individual so testifying is exempt from prosecution or punishment for any perjury or false statements committed while testifying and the testimony or evidence given or produced is admissible upon any criminal action, investigation, or proceeding concerning the perjury or false statements, nor is the individual exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance laws of this state. The individual may execute, acknowledge, and file in the office of the commissioner a statement expressly waiving such immunity or privilege in respect to any transaction; matter, or thing specified in the statement and thereupon the testimony of the individual or such evidence in relation to the transaction; matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if received or produced the individual is not entitled to any immunity or privilege on account of any testimony given or evidence produced.

SECTION 6. AMENDMENT. Section 26.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-07-04. Notice of petition for consolidation or reinsurance. When a petition is filed, the commissioner shall issue an order requiring notice by mail to each policyholder of the petitioning company, of the pendency of the petition and of the time when and place where a hearing on the petition will be held. The commissioner shall publish the order of notice and the petition in five newspapers, one of which must be a daily newspaper published at the state capital, for at least two weeks before the hearing upon the petition.

SECTION 7. A new section to chapter 26.1-08 of the North Dakota Century Code is created and enacted as follows:

Termination of coverage. Coverage pursuant to this chapter terminates:

1. Upon request of the covered person.
2. For failure to pay the required premium subject to a thirty-one-day grace period.
3. When the lifetime maximum benefit amount has been reached under subsection 2 of section 26.1-08-05 or subsection 2 of section 26.1-08-06.
4. If the covered person qualifies for health benefits under other plans or policies.
5. When the covered person ceases to be a resident of this state.

\* SECTION 8. AMENDMENT. Subdivision c of subsection 2 of section 26.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries;

\* NOTE: Section 26.1-10-02 was also amended by section 2 of House Bill No. 1242, chapter 305.



provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in ~~subsection 4 subdivisions a and b of subsection 2~~. "The total investment of the insurance company" includes:

- (1) Any direct investment by the company in an asset.
- (2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.

SECTION 9. AMENDMENT. Section 26.1-16-24 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-24. Annual statement required - Renewal of certificate of authority. ~~Before February second of each year, a~~ Every benevolent society shall ~~file with the commissioner~~ transmit to the commissioner, not later than March first of each year, an annual statement as of the previous December thirty-first. The statement must be on any forms required by the commissioner and must show:

1. All income of the society by sources.
2. All disbursements of the society detailed as to nature.
3. A listing of the assets of the society.
4. The liabilities of the society.
5. The number of members in the society.
6. Any other information required by the commissioner.

If it appears from the statement that the society has a membership at least equal in number to that required as a condition precedent to authorization and that it is otherwise qualified under the requirements of this chapter, a renewal certificate of authority must be issued on the succeeding April thirtieth. The fees for the filing of the statement and the issuance of the certificate are those specified in section 26.1-01-07.

SECTION 10. AMENDMENT. Section 26.1-17-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-23. Licensing of sales representatives. The sales representatives of any health service corporation are subject to the laws pertaining to insurance agents as defined in chapter 26.1-26. ~~The commissioner shall prescribe the form for the license or certificate. The fee for a license or certificate is three dollars. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal is prescribed in section 26.1-01-07.~~

~~Sales representatives licensed to sell hospital service contracts may also sell all other health service contracts without further licensure.~~

SECTION 11. AMENDMENT. Section 26.1-17-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-31. Annual statement. Every health service corporation shall ~~annually before April second file in the office of the commissioner, a verified statement signed by at least two of its principal officers, showing the condition of its affairs transmit to the commissioner, not later than March first of each year, a statement of its condition and business for the year ending on the preceding December thirty-first.~~ The statement must be in the form and must contain the information prescribed by the commissioner.

SECTION 12. AMENDMENT. Section 26.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-19-10. Licensing of sales representatives. The sales representatives of a prepaid legal services organization are subject to the laws pertaining to insurance agents as defined in chapter 26.1-26. The license for ~~the a sales representatives representative~~ must be issued on a form prescribed by the commissioner, and the fee for a license is ~~three dollars~~ or renewal thereof shall be prescribed in section 26.1-01-07.

SECTION 13. AMENDMENT. Section 26.1-26-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-03. Acting as agent, broker, consultant, or limited representative without license prohibited - Penalty. No person may act as or hold oneself out to be an insurance agent, insurance broker, insurance consultant, limited insurance representative, or surplus lines insurance broker unless licensed under this chapter. No insurance agent, insurance broker, limited insurance representative, or surplus lines insurance broker may apply for, procure, negotiate for, or place for others, any policy for any line of insurance as to which that person is not then qualified and licensed under this chapter. No insurance agent or limited insurance representative may place an insurance policy with any insurer as to which that person does not then hold a license as an insurance agent or limited insurance representative under this chapter. Any person willfully violating this section is guilty of a class B ~~misdemeanor~~ C felony.

SECTION 14. AMENDMENT. Subdivision b of subsection 4 of section 26.1-31.2-01 of the North Dakota Century Code as created by section 12 of House Bill No. 1242, as approved by the fifty-second legislative assembly, is amended and reenacted as follows:

- b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which is under the supervision of the department of trade and industry of the United Kingdom and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ~~ten million~~ billion dollars; the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the

member's solvency by the member's domiciliary regulator and its independent public accountant.

SECTION 15. AMENDMENT. Section 26.1-33-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-02. Solicitation of life insurance regulated by rule of the commissioner. Insurers shall deliver to purchasers of life insurance information which will improve the purchaser's ability to select the most appropriate plan of life insurance for the purchaser's needs, which will improve the purchaser's understanding of the basic features of the policy which has been purchased or which is under consideration, and which will improve the ability of the purchaser to evaluate the relative costs of similar plans of life insurance. The commissioner ~~shall~~ may ~~adopt by rule the national association of insurance commissioners life insurance disclosure model regulation of December 9, 1983~~ reasonable rules to implement this section.

SECTION 16. AMENDMENT. Subsections 9 and 13 of section 26.1-33-05 of the North Dakota Century Code are amended and reenacted as follows:

9. A provision that when a policy becomes a claim by the death of the insured, settlement must be made upon receipt of due proof of death, or not later than two months after receipt of the proof, and must include reasonable interest accrued from the date of death so long as a proof of death is filed within one hundred eighty days after the date of the death.
13. A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death the ~~proportion~~ portion of the premium, fee, or other sum as corresponds with the unexpired time upon the amount of policy remaining paid beyond the month of death. This provision does not apply to term life insurance, flexible premium life insurance, or to any policy where the insurer has a valid defense to the payment of benefits under the policy.

SECTION 17. AMENDMENT. Section 26.1-33-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-12. Group life policy conversion privileges. If any individual insured under a group life insurance policy delivered in this state after July 1, 1983, becomes entitled under the terms of the policy to have an individual life insurance policy issued without evidence of insurability, subject to making of application and payment of the first premium within the period specified in the policy, and if the individual is not given notice of the existence of the right at least fifteen days prior to the expiration date of the period, then the individual has an additional period within which to exercise that right. This additional period expires fifteen days after the individual is given notice. Written notice presented to the individual or mailed ~~to~~ by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder or notice of the right of conversion included in a certificate provided to each employee or notice provided by the attachment of a separate notice to the certificate constitutes notice for the purpose of this section.

SECTION 18. AMENDMENT. Section 26.1-33-37 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-37. Suicide - Determination - No defense to life policy or certificate after one year. The sanity or insanity of the person is not a factor in determining whether a person committed suicide within the terms of a life insurance policy or certificate regulating the payment of benefits in the event of the insured's suicide. In any suit on a life insurance policy or certificate, it is no defense after the policy or certificate has been in force one year that the insured committed suicide, and any provision or stipulation to the contrary in the policy or certificate is void.

SECTION 19. AMENDMENT. Subdivisions e and o of subsection 1 of section 26.1-36-04 of the North Dakota Century Code are amended and reenacted as follows:

- e. A provision that the policyholder is entitled to a grace period of ~~fifteen days for monthly premiums and thirty-one days for all others~~ for the payment of any premium due except the first, during which the policy continues in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.
- o. A provision that in the event of the death of an insured, the insurer will refund within thirty days after notice to the insurer of the insured's death ~~that proportion the portion of the premium, fees, or other sum as corresponds with the unexpired time upon the amount of the policy remaining paid beyond the month of death~~ after deducting any claim for losses during the current term of the policy. This provision does not apply where the insurer has a valid defense to the payment of benefits under the policy.

SECTION 20. AMENDMENT. Section 26.1-36-29 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-29. Coordination of benefits in individual and group accident and health policies - Limitations. An insurer or health service corporation may not issue or renew any individual or group accident and health insurance policy that excludes or reduces the benefits payable or services to be rendered to or on behalf of any insured because benefits have been paid or are also payable under any individually underwritten and individually issued contract or plan of insurance which provides exclusively for accident and health benefits, irrespective of the mode or channel of premium payment, with or without payroll deduction, to the insurer and regardless of any reduction in the premium by virtue of the insured's membership in any organization or of the insured's status as an employee. This section does not affect the practice of coordination of benefits between group policies as provided in ~~sections 26.1-17-17 and section~~ 26.1-36-10.

SECTION 21. AMENDMENT. Section 26.1-36-36.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-36.2. Noncustodial care coverage. An insurer offering convalescent nursing home, extended care facility, or skilled nursing facility coverage in excess of the one hundred fifty day medicare benefit under chapter 26.1-36.1 or 26.1-45 shall ~~also~~ cover intermediate care confinements in the same manner as skilled care confinements.

SECTION 22. AMENDMENT. Subsections 1 and 2 of section 26.1-38.1-01 of the North Dakota Century Code are amended and reenacted as follows:

1. This section provides coverage for the policies and contracts specified in subsection 2:
  - a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees of the persons covered under subdivision b; and
  - b. To persons who are owners of or certificate holders under such policies or contracts; or, in the case of unallocated annuity contracts, to the persons who are contractholders; and who
    - (1) Are residents; or
    - (2) Are not residents, but only under all of the following conditions:
      - (a) The insurers that issued such policies or contracts are domiciled in this state;
      - (b) Such insurers never held a license or certificate of authority in the states in which such persons reside;
      - (c) Such states have associations similar to the association created by this chapter; and
      - (d) Such persons are not eligible for coverage by such associations.
2. This chapter provides coverage to the persons specified in subsection 1 for direct, nongroup life, health, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

SECTION 23. AMENDMENT. Subsections 2, 3, and 4 of section 26.1-38.1-05 of the North Dakota Century Code are amended and reenacted as follows:

2. a. If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in ~~subsection 3~~

subdivision b, the association shall, in its discretion, either:

- a- (1) Take any of the actions specified in subsection 1, subject to the conditions therein; or
  - b- (2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.
- 3- b. The association is subject to the requirements of **subsection 2 subdivision a** only if:
- a- (1) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:
    - ↔ (a) The delinquency proceeding shall not be dismissed;
    - ↔ (b) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and
    - ↔ (c) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and
  - b- (2) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or
  - c- (3) If the impaired insurer is a foreign or alien insurer,
    - ↔ (a) It has been prohibited from soliciting or accepting new business in this state;
    - ↔ (b) Its certificate of authority has been suspended or revoked in this state;
    - ↔ (c) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state and.
3. If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

- a.
    - (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
    - (2) Assure payment of the contractual obligations of the insolvent insurer; and
    - (3) Provide such moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or
  - ~~a~~ b. With respect only to life and health insurance policies, provide benefits and coverage in accordance with subsection 4.
4. When proceeding under ~~subdivision b~~ paragraph 2 of subdivision a of subsection 2 or ~~subdivision a b~~ subsection 3, the association shall, with respect to only life and health insurance policies:
- a. Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:
    - (1) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies.
    - (2) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies.
  - b. Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days notice of the termination of the benefits provided.
  - c. With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision d, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.
  - d. In providing the substitute coverage required under subdivision c, the association may offer either to reissue the terminated coverage or to issue an alternative policy.
    - (1) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide

for any waiting period or exclusion that would not have applied under the terminated policy.

- (2) The association may reinsure any alternative or reissued policy.
- e. Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types of future issuance without regard to any particular impairment or insolvency.
  - f. Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.
  - g. Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
  - h. If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.
  - i. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

SECTION 24. AMENDMENT. Subsection 2 of section 26.1-38.1-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Within one hundred eighty days after July 1, 1989, the association shall prepare a summary document describing the general purposes and current limitations of the chapter and complying with subsection 3. This document should be submitted to the commissioner for approval. Sixty days after receiving such approval, no insurer may deliver a policy or contract described in ~~subdivision 2~~ of subsection 2 of section 26.1-38.1-01 to a policyholder or contractholder unless the document is delivered to the policyholder or contractholder to or at the time of delivery of the policy or contract except if subsection 4 applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document does not mean that either the policy or contract or the holder thereof would be covered in the event of the impairment or



insolvency of a member insurer. The document must be revised by the association as amendments to the chapter may require. Failure to receive this document does not give the policyholder, contractholder, certificate holder, or insured any greater rights than those stated in this chapter.

\* SECTION 25. AMENDMENT. Section 26.1-42-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-42-01. Scope. This chapter applies to all kinds of direct insurance policies and contracts except life insurance policies, accident and health insurance policies, health service contracts, annuity contracts, contracts supplemental to life and accident and health insurance policies and annuity contracts, and any other policies and contracts within the application of ~~section 26.1-38-01~~ chapter 26.1-38.1, title insurance policies, surety contracts, credit insurance policies and contracts, mortgage guaranty insurance policies and contracts, and ocean marine insurance policies and contracts. This chapter must be liberally construed.

SECTION 26. AMENDMENT. Section 32-12.1-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12.1-05. Liability insurance policy coverage. An insurance policy or insurance contract purchased by a political subdivision or state agency or a government self-insurance pool in which a political subdivision or state agency participates pursuant to this chapter may provide coverage for the types of liabilities established by this chapter and may provide such additional coverage as the state agency or the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision or state agency pursuant to any other provision of law and if premium savings will result therefrom, any insurance policies purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 27. AMENDMENT. Subsection 1 of section 32-12.1-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After review by the commissioner of insurance and after receiving the commissioner's approval, the state or any state agency may insure either through an approved insurance company or through a government self-insurance pool formed under this chapter ~~against liabilities provided by this chapter~~ for its own protection or for the protection of any state employee. If a premium savings will result therefrom and the commissioner of insurance approves, the insurance policies may be taken out for more than one year, but in no event beyond a period of five years. No purchase of insurance pursuant to this section or participation in a government self-insurance pool may be construed as a waiver of any existing immunity to suit.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Section 26.1-42-01 was also amended by section 15 of Senate Bill No. 2068, chapter 54.

## CHAPTER 302

HOUSE BILL NO. 1229  
(Committee on Industry, Business and Labor)  
(At the request of the Commissioner of Insurance)

**INSURANCE RATEMAKING ORGANIZATIONS**

AN ACT to create and enact sections 26.1-25-02.1, 26.1-25-10.1, 26.1-25-10.2, 26.1-25-10.3, 26.1-25-10.4, 26.1-25-10.5, 26.1-25-19, and 26.1-30.1-03.1 of the North Dakota Century Code, relating to the recognition of an advisory organization's ratemaking-related activities; to amend and reenact sections 26.1-03-11, 26.1-25-01, subsections 1 and 2 of section 26.1-25-03, sections 26.1-25-04, 26.1-25-05, 26.1-25-09, 26.1-25-12, 26.1-25-13, 26.1-25-14, 26.1-25-17, 26.1-25-18, 26.1-30.1-02, 26.1-30.1-03, 26.1-30.1-06, subsection 3 of section 26.1-40-01, section 26.1-40-17, and subsection 1 of section 26.1-40-17.1 of the North Dakota Century Code, relating to the recognition of an advisory organization's ratemaking-related activities, cancellation and nonrenewal of commercial insurance, automobile policies, and policies covering rental vehicles; and to repeal sections 26.1-25-06, 26.1-25-07, 26.1-25-08, 26.1-25-10, and 26.1-25-11 of the North Dakota Century Code, relating to property and casualty insurance ratemaking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-11. Fire companies to report statistical data - Failure to report - Exceptions to reporting requirements. Each insurance company issuing fire insurance policies covering property in this state shall annually report information setting forth the amount of earned premiums in this state for policies covering insured property located in this state and the amount of claims incurred. This information is not to include personal lines or farm property insurance. This information must be reported on a form prescribed by the commissioner. The company shall file the form with the commissioner or shall certify to the commissioner that the information has been reported directly to a rating organization that predicates an advisory organization upon whose filings the majority of the fire insurance rates for North Dakota are based. The form or certification must accompany the annual statement required under section 26.1-03-07. The commissioner shall forward information filed under this section to the rating advisory organization that predicates upon whose filings a majority of the fire insurance rates for North Dakota are based. Each rating advisory organization filing rates pursuant to chapter 26.1-25 shall use this information in making rates its filing. The commissioner shall revoke the certificate of authority of an insurance company failing to file the information required by this section.

SECTION 2. AMENDMENT. Section 26.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-01. Purpose of chapter - Construction. The purpose of this chapter is to promote the public welfare by regulating insurance rates so that they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ~~ratemaking~~ ratemaking-related activities and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in ~~insurance rates~~, rating systems, rating plans or practices. This chapter must be liberally interpreted to carry into effect this section.

SECTION 3. Section 26.1-25-02.1 of the North Dakota Century Code is created and enacted as follows:

26.1-25-02.1. Definitions.

1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities as enumerated in this chapter. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.
2. "Commercial risk" means any kind of risk which is not a personal risk.
3. "Developed losses" means losses including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss including loss adjustment expense payments.
4. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.
5. "Joint underwriting" means a voluntary arrangement established to provide insurance coverage for a commercial risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.
6. "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.
7. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs.
8. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the

- sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.
9. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses other than loss adjustment expenses, or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
10. "Rate" means that cost of insurance per exposure unit whether expressed as a single member or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.
11. "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.
12. "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.
13. "Supporting information" means:
- a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;
  - b. The interpretation of any other data relied upon by the filer; and
  - c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

SECTION 4. AMENDMENT. Subsections 1 and 2 of section 26.1-25-03 of the North Dakota Century Code are amended and reenacted as follows:

1. Rates must be made in accordance with the following provisions:
  - a. Due consideration must be given to past and prospective loss experience within this state and outside this state to the extent that the consideration is given to areas the commissioner determines are representative of this state, to any conflagration and catastrophe hazards, to a reasonable margin for ~~underwriting~~ profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide, as determined by the commissioner, and those specially applicable to this state, and to all other relevant factors within and outside

this state. In the case of fire insurance rates, consideration must be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which the experience is available. In determining the reasonableness of the profit, consideration may be given to investment income.

- b. ~~In the case of casualty insurance, the~~ The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- c. ~~In the case of casualty insurance, risks~~ Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expense. No risk classification, however, may be based upon race, creed, national origin, or the religion of the insured.
- d. ~~In the case of property insurance, manual, minimum, class rates, rating schedules, or rating plans must be made and adopted, except in the case of specified inland marine rates on risks specially rated:~~
- e. Rates may not be excessive, inadequate, or unfairly discriminatory.

2. Except to the extent necessary to meet subdivision ~~e~~ d of subsection 1, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

SECTION 5. AMENDMENT. Section 26.1-25-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-04. Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum class rate, rating schedule or rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing must state the proposed effective date thereof and must indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, the commissioner shall require the insurer to furnish the information upon which it supports the filing and the waiting period commences

as of the date the information is furnished. Every insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include:

- a. The experience or judgment of the insurer or rating advisory organization making the filing.
- b. Its interpretation of any statistical data upon which it relies.
- c. The experience of other insurers or rating advisory organizations.
- d. Any other relevant factors.

A filing and any supporting information is open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by a rating an advisory organization, must be filed with the commissioner.

2. An insurer may satisfy its obligation to make the filings by becoming a member of, or a subscriber to, a licensed rating organization which makes the filings; and by authorizing the commissioner to accept the filings on its behalf; provided, that upon the request of the commissioner the insurer shall file information relating to the insurer which supports the filing made by a rating organization prior to the filing becoming effective for the insurer. After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by an advisory organization. Insurers utilizing the services of an advisory organization must provide with their rate filing, at the request of the commissioner, a description of the rationale for such use, including its own information and method of utilization of the advisory organization's information. This chapter does not require any insurer to become a member of or a subscriber to any rating advisory organization.
3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.
4. Subject to the exceptions specified in subsection 5, each filing must be on file for a waiting period of sixty days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or rating advisory organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or rating advisory organization, the commissioner may authorize a filing

which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

5. Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing, becomes effective when filed and is deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect. Specific inland marine rates on risks specially rated by a rating an advisory organization become effective when filed and are deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.
6. Under any rules the commissioner may adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The orders and rules must be made known to insurers and rating advisory organizations affected thereby. The commissioner may make any examination the commissioner deems advisable to ascertain whether any rates affected by the order meet the standards set forth in subdivision e of subsection 1 of section 26.1-25-03.
7. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.
8. No insurer may make or issue a contract or policy except in accordance with the filings that have been approved and are in effect for the insurer as provided in this chapter or in accordance with subsection 6 or 7.
9. Nothing in this chapter may be construed to require an advisory organization or its members or its subscribers to immediately refile final rates or premium charges previously approved by the commissioner. Members or subscribers of an advisory organization are authorized to continue to use insurance rates or premium charges approved before the effective date of this Act or decreases from those rates or premium charges filed by the advisory organization and subsequently approved after the effective date of this Act.

SECTION 6. AMENDMENT. Section 26.1-25-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-05. Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 26.1-25-04 the commissioner finds that a filing does not meet the requirements of this chapter, the

- commissioner shall send to the insurer or rating advisory organization which made the filing written notice of disapproval of the filing specifying therein in what respects the commissioner finds the filing fails to meet the requirements of this chapter and stating that the filing will not become effective.
2. If within thirty days after a filing subject to subsection 5 of section 26.1-25-04 has become effective the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or rating advisory organization that made the filing written notice of disapproval of the filing specifying therein in what respect the commissioner finds that the filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. The disapproval may not affect any contract made or issued prior to the expiration of the period set forth in the notice.
  3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall, after a hearing held upon not less than ten days' written notice, specifying the matters to be considered at the hearing, to every insurer and rating advisory organization which made the filing, issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. Copies of the order must be sent to every such insurer and rating advisory organization. The order may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.
  4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon. However, the insurer or rating advisory organization that made the filing may not proceed under this subsection. The application must specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds are established, and that the grounds otherwise justify holding such a hearing, the commissioner shall, within thirty days after receipt of the application, hold a hearing upon not less than ten days' written notice to the applicant and to every insurer and rating advisory organization which made the filing. If, after the hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. Copies of the order must be sent to the applicant and to every such insurer and rating advisory organization. The order may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.
  5. A manual, minimum class rate, rating schedule, rating plan, or rating rule, or any modification of any of the foregoing, which has



been filed pursuant to the requirements of section 26.1-25-04, may not be disapproved if the rates thereby produced meet the requirements of this chapter.

SECTION 7. AMENDMENT. Section 26.1-25-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-09. Information to be furnished insureds - Hearings and appeals of insureds. Every ~~rating organization and every~~ insurer which ~~makes its own files~~ rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to the rate. Every ~~rating organization and every~~ insurer which ~~makes its own files~~ rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by an authorized representative, on the person's written request to review the manner in which the rating system has been applied in connection with the insurance afforded the person. If the ~~rating organization or~~ insurer fails to grant or reject the request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the ~~rating organization or the~~ insurer on the request may, within thirty days after written notice of the action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to the ~~rating organization or~~ insurer, may affirm or reverse the action.

SECTION 8. Section 26.1-25-10.1 of the North Dakota Century Code is created and enacted as follows:

26.1-25-10.1. Licensing advisory organizations.

1. No advisory organization may provide any service relating to the rates of any insurance subject to this chapter, and no insurer may utilize the services of such organization for such purposes unless the organization has obtained a license under subsection 3.
2. No advisory organization may refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.
3. a. An advisory organization applying for a license shall include with its application:
  - (1) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
  - (2) A list of its members and subscribers;
  - (3) The name and address of one or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served;

- (4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
  - (5) A biography of the ownership and management of the organization; and
  - (6) Any other relevant information and documents that the commissioner may require.
- b. Every organization that has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section must be filed at least thirty days before it becomes effective.
  - c. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner may not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market.
  - d. Licenses issued pursuant to this section are perpetual in duration unless the license is suspended or revoked. The fee for the license is fifty dollars per year. The commissioner may at any time, after hearing, revoke or suspend the license of an advisory organization that does not comply with the requirements and standards of this chapter.

SECTION 9. Section 26.1-25-10.2 of the North Dakota Century Code is created and enacted as follows:

26.1-25-10.2. Insurers and advisory organizations - Prohibited activity.

1. No insurer or advisory organization may:
  - a. Attempt to monopolize or combine or conspire with any other person to monopolize an insurance market.
  - b. Engage in a boycott, on a concerted basis, of an insurance market.
2. a. No insurer may agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to develop statistical plans permitted by subsection 1. The fact that two or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections, or

- similar materials is not sufficient in itself to support a finding that an agreement exists.
- b. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.
3. No insurer or advisory organization may make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.
4. In addition to the other prohibitions contained in this chapter, except as specifically permitted under this section, no advisory organization may compile or distribute recommendations relating to rates that include expenses other than loss adjustment expenses, or profit.

SECTION 10. Section 26.1-25-10.3 of the North Dakota Century Code is created and enacted as follows:

26.1-25-10.3. Advisory organizations - Permitted activity. Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

1. Develop statistical plans including territorial and class definitions.
2. Collect statistical data from members, subscribers, or any other sources.
3. Prepare and distribute prospective loss costs.
4. Prepare and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables.
5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions, or minimum premiums.
6. Distribute information that is required or directed to be filed with the commissioner.
7. Conduct research and onsite inspections in order to prepare classifications of public fire defenses.
8. Consult with public officials regarding public fire protection as it would affect members, subscribers, and others.
9. Conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses.

10. Prepare policy forms and endorsements and consult with members, subscribers, and others relative to their use and application.
11. Conduct research and onsite inspections for the purpose of providing risk information relating to individual structures.
12. Collect, compile, and distribute past and current prices of individual insurers and publish such information.
13. File final rates, at the direction of the commissioner, for residual market mechanisms.
14. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

SECTION 11. Section 26.1-25-10.4 of the North Dakota Century Code is created and enacted as follows:

26.1-25-10.4. Advisory organizations - Filing requirements. Every advisory organization shall file with the commissioner for approval all prospective loss costs and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this state. The filings are subject to the provisions of this chapter relating to filings made by insurers.

SECTION 12. Section 26.1-25-10.5 of the North Dakota Century Code is created and enacted as follows:

26.1-25-10.5. Joint underwriting, joint reinsurance pool, and residual market activities.

1. Authorization. Notwithstanding subdivision a of subsection 2 of section 26.1-25-10.1, insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms may not be deemed an advisory organization.
2. Regulation.
  - a. Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool, and residual market mechanism activities are subject to the other provisions of this chapter.
  - b. If, after hearing, the commissioner finds that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this chapter, the commissioner may issue a written order and require the discontinuance of such activity or practice.

- c. Every pool shall file with the commissioner a copy of its constitution; its articles of incorporation, agreement, or association; its bylaws, rules, and regulations governing its activities; its members; the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served; and any changes in amendments or changes in the foregoing.
- d. Any residual market mechanism, plan, or agreement to implement such a mechanism, and any changes or amendments thereto, must be submitted in writing to the commissioner for consideration and approval, together with such information as may be reasonably required. The commissioner may approve only such agreements as are found to contemplate:
- (1) The use of rates that meet the standards prescribed by this chapter; and
  - (2) Activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing, the commissioner finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order to the parties and either require the discontinuance of such acts or revoke approval of any such agreement.

SECTION 13. AMENDMENT. Section 26.1-25-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-12. Examinations. The commissioner shall, at least once in five years, make or cause to be made an examination of each rating organization licensed in this state. The commissioner may, as often as the commissioner deems expedient, make or cause to be made an examination of each advisory organization referred to in section ~~26.1-25-10~~ 26.1-25-10.1 and of each group, association, or other organization referred to in section ~~26.1-25-11~~ 26.1-25-10.5. The reasonable costs of any examination must be paid by the ~~rating organization~~; advisory organization, or group, association, or other organization examined upon presentation to it of a detailed account of the costs. The officer, manager, agents, and employees of the ~~rating organization~~; advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation.

The commissioner shall furnish two copies of the examination report to the organization, group, or association examined and shall notify the organization, group, or association that it may, within twenty days thereafter, request a hearing on the report or on any facts or recommendations therein. Before filing any report for public inspection, the commissioner shall grant a hearing to the organization, group, or association examined. The report of any examination, when filed for public inspection,

is admissible in evidence in any action or proceeding brought by the commissioner against the organization, group, or association examined, or its officers or agents, and is prima facie evidence of the facts stated therein. The commissioner may withhold the report of any examination from public inspection for the time as the commissioner deems proper.

In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

SECTION 14. AMENDMENT. Section 26.1-25-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-13. Rate administration.

1. The commissioner shall adopt reasonable rules and statistical plans, reasonably adopted to each of the rating systems on file with the commissioner, which may be modified from time to time and which must be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 26.1-25-03. The rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In adopting the rules and plans, the commissioner shall give due consideration to the rating systems on file with the commissioner and, in order that the rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for the rating systems in other states. No insurer may be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more rating advisory organizations or other agencies to assist the commissioner in gathering such experience and making compilations thereof, and the compilations must be made available, subject to reasonable rules adopted by the commissioner, to insurers and rating advisory organizations.
2. Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.
3. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating advisory organization may exchange information and experience data with insurance supervisory officials, insurers, and rating advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.
4. The commissioner may adopt reasonable rules necessary to effect the purposes of this chapter.

SECTION 15. AMENDMENT. Section 26.1-25-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-14. False or misleading information. No person or organization may willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating advisory organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section subjects the offender to the penalties provided in section 26.1-25-18.

SECTION 16. AMENDMENT. Section 26.1-25-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-17. Hearing procedure and judicial review. Any insurer or rating advisory organization aggrieved by any order or decision of the commissioner made without a hearing may, within thirty days after notice of the order to the insurer or organization, make written request to the commissioner for a hearing thereon. The commissioner shall hear the party within twenty days after receipt of the request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after the hearing, the commissioner shall affirm, reverse, or modify the previous action, specifying the reasons therefor. Pending the hearing and decision thereon the commissioner may suspend or postpone the effective date of the previous action. This chapter does not require the observance at any hearing of formal rules of pleading or evidence.

SECTION 17. AMENDMENT. Section 26.1-25-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-18. Penalties. Any person who violates this chapter shall be guilty of a class B misdemeanor.

The commissioner may suspend the license of any rating advisory organization or insurer which fails to comply with the order of the commissioner with the time limited by the order or any extension thereof which the commissioner may grant. However, no right to suspend any license exists until after the time for appeal from the order has expired, or if an appeal has been taken, until the order has been affirmed, and no right of suspension exists if prompt compliance with the order is made following the expiration of the time for appeal or the entry of a final order or judgment of affirmance upon appeal. The commissioner may determine when a suspension becomes effective and it remains in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

A license may not be suspended or revoked except upon a written order of the commissioner, stating the findings, made after a hearing held upon not less than ten days' written notice to the person or organization specifying the alleged violation.

SECTION 18. Section 26.1-25-19 of the North Dakota Century Code is created and enacted as follows:

26.1-25-19. Exemptions. The commissioner may, by rule, exempt any market from any or all of the provisions of this chapter, if and to the extent that the exemption is necessary to achieve the purposes of this chapter.

SECTION 19. AMENDMENT. Section 26.1-30.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-30.1-02. ~~Midterm cancellation of liability commercial insurance.~~ No insurer may cancel a policy of commercial ~~liability~~ insurance during the term of the policy, except for one or more of the following reasons:

1. Nonpayment of premiums;
2. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy;
3. Actions by the insured that have substantially increased or substantially changed the risk insured;
4. Refusal of the insured to eliminate known conditions that increase the potential for loss after notification by the insurer that the condition must be removed;
5. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract;
6. Loss of reinsurance by the insurer which provided coverage to the insured for a significant amount of the underlying risk insured. Any notice of cancellation pursuant to this subsection must advise the policyholder that the policyholder has ten days from the date of receipt of the notice to appeal the cancellation to the insurance commissioner and that the commissioner will render a decision as to whether the cancellation is justified because of the loss of reinsurance within five business days after receipt of the appeal;
7. A determination by the insurance commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or
8. Nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing such insurance; except this provision for cancellation for failure to pay dues does not apply to persons who are retired at sixty-two years of age or older or to any person who is disabled according to social security standards.
9. A violation of any local fire, health, safety, building, or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against.

SECTION 20. AMENDMENT. Section 26.1-30.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-30.1-03. Notice. Cancellation under subsections 2 through ~~8~~ 9 of section 26.1-30.1-02 is not effective prior to thirty days after notice to the policyholder. The notice of cancellation must contain a specific reason for cancellation as provided in section 26.1-30.1-02. A policy may not be



canceled for nonpayment of premium pursuant to subsection 1 of section 26.1-30.1-02 unless the insurer, at least ten days prior to the effective cancellation date, has given notice to the policyholder of the amount of premium due and the due date. The notice must state the effect of nonpayment by the due date. No cancellation for nonpayment of premium is effective if payment of the amount due is made prior to the effective date set forth in the notice.

SECTION 21. Section 26.1-30.1-03.1 of the North Dakota Century Code is created and enacted as follows:

26.1-30.1-03.1. Five-day notice exception for cancellation. Policies subject to this chapter may be canceled upon five days' written notice to the named insureds if one or more of the following conditions exist:

1. Buildings with at least sixty-five percent of the rental units in the building unoccupied.
2. Buildings that have been damaged by a peril insured against and the insured has stated or such time has elapsed as clearly indicates that the damage will not be repaired.
3. Buildings to which, following a fire, permanent repairs have not commenced within sixty days following satisfactory adjustment of loss.
4. Buildings that have been unoccupied sixty consecutive days, except buildings that have a seasonal occupancy, and buildings actually in the course of construction or repair and reconstruction which are properly secured against unauthorized entry.
5. Buildings that are in danger of collapse because of serious structural conditions or those buildings subject to extremely hazardous conditions not contemplated in filed rating plans such as those buildings that are in a state of disrepair as to be dilapidated.
6. Buildings on which, because of their physical condition, there is an outstanding order to vacate or an outstanding demolition order, or which have been declared unsafe in accordance with applicable law.
7. Buildings from which fixed and salvageable items have been or are being removed and the insured can give no reasonable explanation for the removal.
8. Buildings on which there is reasonable knowledge and belief that the property is endangered and is not reasonably protected from possible arson for the purpose of defrauding an insurer.
9. Buildings with any of the following conditions:
  - a. Failure to furnish heat, water, sewer service, or public lighting for thirty consecutive days or more.
  - b. Failure to correct conditions dangerous to life, health, or safety.

- c. Failure to maintain the building in accordance with applicable law.
  - d. Failure to pay property taxes for more than one year.
10. Buildings that have characteristics of ownership condition, occupancy, or maintenance which are violative of law or public policy.

SECTION 22. AMENDMENT. Section 26.1-30.1-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-30.1-06. Nonrenewal of commercial ~~liability~~ insurance policies - Notice required - Exceptions.

1. An insurer shall renew the policy, unless at least thirty days prior to the date of expiration provided in the policy, a notice of intention not to renew the policy beyond the agreed expiration date is made to the policyholder. The insurer shall include a statement of the reasons for a nonrenewal with the notice.
2. This section does not apply if the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.

SECTION 23. AMENDMENT. Subsection 3 of section 26.1-40-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Policy" means any automobile policy which includes automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, basic or optional excess no-fault benefits, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured an individual residing in this state, and under which the insured vehicles designated in the policy are of the following types only:
  - a. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others.
  - b. Any four-wheel motor vehicle with a load capacity of one thousand five hundred pounds [680.39 kilograms] or less which is not used in the occupation, profession, or business of the insured, nor used as a public or livery conveyance, nor rented to others.
  - c. Any motorcycle as that term is defined in section 39-01-01 that is not used as a public or livery conveyance, nor rented to others.

"Policy" does not include any policy that has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy; any policy issued under the North Dakota assigned risk plan; any policy insuring more than six motor vehicles; any policy covering the operation of a garage, automobile sales agency, repair shop,

service station, or public parking place; any policy providing insurance only on an excess basis; or any other contract providing insurance to a named insured even though the contract may incidentally provide insurance with respect to such motor vehicles.

SECTION 24. AMENDMENT. Section 26.1-40-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances. When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits, is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

Any policy provisions at variance with this section must be interpreted so as to comply with this section.

SECTION 25. AMENDMENT. Subsection 1 of section 26.1-40-17.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Every motor vehicle liability insurance policy, as that term is defined in section 39-16-11, as required by section 39-08-20, covering noncommercial private passenger motor vehicles must provide that all of the obligation for damage and loss of use to a rented private passenger vehicle will be covered by the property damage liability portion of the policy and subject to that policy limit. The obligation of the policy must not be contingent on fault or negligence of the insured. For purposes of this section, private passenger motor vehicle includes station wagons, minivans, vans, and pickups, and does not include motor homes, motorcycles, or trucks other than pickups.

SECTION 26. REPEAL. Sections 26.1-25-06, 26.1-25-07, 26.1-25-08, 26.1-25-10, and 26.1-25-11 of the North Dakota Century Code are repealed.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 303

HOUSE BILL NO. 1077  
(Kloubec)

### INSURANCE PREMIUM TAX CREDIT

AN ACT to provide a one-time credit against insurance premium tax liability for certain taxpayers; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Insurance premium tax credit for certain 1989 premium tax payments. A taxpayer is entitled to a credit, as provided in this section, against the tax otherwise due under section 26.1-03-17 if all of the following conditions are met:

1. The taxpayer collected premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits, or finance and service charges in this state for sales of insurance other than life insurance after December 31, 1988, and before April 14, 1989, for which the amount paid by the purchaser was based upon a tax rate of one and one-fourth percent under section 26.1-03-17.
2. The taxpayer paid tax on the sale of insurance described in subsection 1 at a rate of one and three-fourths percent under section 26.1-03-17.
3. The taxpayer has not recouped the difference between the amount collected as determined under subsection 1 and the amount paid as premium tax as determined under subsection 2 through any other method, including a rate increase.
4. The credit under this section is limited to the difference between the amount collected in taxes as determined under subsection 1 and the amount paid in taxes as determined under subsection 2.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1992, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 304

HOUSE BILL NO. 1227  
(Committee on Industry, Business and Labor)  
(At the request of the Commissioner of Insurance)

### MEDICARE SUPPLEMENT AND NURSING HOME INSURANCE

AN ACT to create and enact chapter 26.1-36.1, a new subsection to section 26.1-45-05, and sections 26.1-45-05.2, 26.1-45-11, and 26.1-45-12 of the North Dakota Century Code, relating to the regulation of medicare supplement insurance policies and sales, and provisions of long-term care insurance policies; to amend and reenact subdivision 1 of subsection 9 of section 26.1-04-03, sections 26.1-45-01, 26.1-45-04, subsection 2 of section 26.1-45-05, subsection 4 of section 26.1-45-06, sections 26.1-45-07, 26.1-45-09, and 26.1-45-10 of the North Dakota Century Code, relating to medicare supplement policies and the Prohibited Practices Act, noncustodial care coverage and provisions of long-term care insurance policies; to repeal sections 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36, 26.1-36-36.1, and 26.1-36-37 of the North Dakota Century Code, relating to the provisions of medicare supplement insurance policies and sales, and provisions of long-term care insurance policies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision 1 of subsection 9 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Providing coverage under a policy issued under chapter 26.1-45 or ~~as defined in section 26.1-36-31~~ chapter 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

SECTION 2. Chapter 26.1-36.1 of the North Dakota Century Code is created and enacted as follows:

26.1-36.1-01. Medicare supplement policies - Definitions. For purposes of this chapter:

1. "Applicant" means:
  - a. In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits.

- b. In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.
2. "Certificate" means any certificate issued under a group medicare supplement policy which has been delivered or issued for delivery in this state.
3. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1935, as amended [Pub. L. 92-603; 86 Stat. 1370].
4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:
- a. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.
- b. A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
- (1) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
- (2) Has been maintained in good faith for purposes other than obtaining insurance; and
- (3) Has been in existence for at least two years prior to the date of its initial offering of the policy or plan to its members.

26.1-36.1-02. Standards for medicare supplement policies.

1. The commissioner shall adopt reasonable rules to establish specific standards for provisions of medicare supplement policies. The standards are in addition to and in accordance with applicable laws of this state, and may include coverage of:
- a. Terms of renewability.
- b. Initial and subsequent conditions of eligibility.
- c. Nonduplication of coverage.
- d. Probationary periods.
- e. Benefit limitations, exceptions, and reductions.

- f. Elimination periods.
  - g. Requirements for replacement.
  - h. Recurrent conditions.
  - i. Definition of terms.
2. The commissioner may adopt rules that specify prohibited medicare supplement policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.
  3. Notwithstanding any other law, a medicare supplement policy may not deny a claim for losses incurred for more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
  4. A policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer in addition to another medicare supplement policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions applies to the new policy unless the policy otherwise provides.
  5. No medicare supplement insurance policy, contract, or certificate in force in the state may contain benefits that duplicate benefits provided by medicare.

26.1-36.1-03. Rulemaking authority. The commissioner may adopt rules to establish standards for benefits, standard policies and optional benefit riders, claims payments, abusive marketing practices and compensation arrangements, and reporting practices for medicare supplement policies.

26.1-36.1-04. Medicare supplement policy loss ratio standards. Medicare supplement policies must return benefits to individual policyholders in the aggregate of not less than sixty-five percent of premium received. The commissioner shall adopt rules to establish minimum standards for medicare supplement policy loss ratios on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices.

26.1-36.1-05. Medicare supplement policy disclosure standards.

1. To provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy may be delivered or issued for delivery in this state and no certificate may be delivered pursuant to a group medicare supplement policy delivered

- or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.
2. The commissioner shall prescribe the format and content of the outline of coverage required by subsection 1. For purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. The outline of coverage must include:
    - a. A description of the principal benefits and coverage provided in the policy.
    - b. A statement of the exceptions, reductions, and limitations contained in the policy.
    - c. A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums.
    - d. A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.
  3. The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare concurrently with the delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare by reason of age, but in no event later than the time of policy delivery.
  4. The commissioner may adopt rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and health insurance policies sold to persons eligible for medicare, other than:
    - a. Medicare supplement policies.
    - b. Disability income policies.
    - c. Basic, catastrophic, or major medical expense policies.
    - d. Single premium, nonrenewable policies.
  5. The commissioner may also adopt rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare.



26.1-36.1-06. Medicare supplement policies - Notice of free examination. Medicare supplement policies or certificates must have a notice prominently printed on or attached to the first page of the policy stating in substance that the applicant may return the policy or certificate within thirty days of its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

26.1-36.1-07. Filing requirements for advertising. Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state shall provide a copy of any medicare supplement advertisement within ten days after its first use in this state whether through written, radio, or television medium for review or approval by the commissioner to the extent required or authorized by state law.

26.1-36.1-08. Effect of policy not conforming to chapter. A policy delivered or issued for delivery to any person in this state in violation of this chapter is valid but must be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with this chapter, the rights, duties, and obligations of the insurer, the insured, and the beneficiary are governed by this chapter.

26.1-36.1-09. General penalty - License suspension or revocation. Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or agent for any such willful violation.

SECTION 3. AMENDMENT. Section 26.1-45-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-01. Definitions. In this chapter ~~and section 26.1-36-37~~, unless the context requires otherwise:

1. "Applicant" means:
  - a. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.
  - b. In the case of a group long-term care insurance policy, the proposed certificate holder.
2. "Certificate" means any certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.
3. "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state to:
  - a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or both, or for members or former members or both, of the labor organizations.

- b. Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
- (1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
  - (2) Has been maintained in good faith for purposes other than obtaining insurance.
- c. An association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations meeting the requirements of section 26.1-45-02.
- d. A group other than a group described in subdivision a, b, or c if the commissioner finds that:
- (1) The issuance of the group policy is not contrary to the best interest of the public;
  - (2) The issuance of the group policy would result in economies of acquisition or administration; and
  - (3) The benefits are reasonable in relation to the premiums charged.
4. "Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered, or designed to provide coverage for not less than one year for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health service corporations, prepaid health plans, health maintenance organizations, or any similar entity. The term also includes home health care type insurance policies or riders which provide directly or which supplement long-term care insurance; and include a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term does not include any insurance policy that is offered primarily to provide catastrophic coverage and comprehensive coverage; basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expenses coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the

benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed, or offered as a long-term care insurance is subject to the provisions of this chapter.

5. "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health service corporation, prepaid health plan, health maintenance organization, or any similar entity.

SECTION 4. AMENDMENT. Section 26.1-45-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-04. Disclosure and standards for long-term care insurance. The commissioner of insurance may adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

SECTION 5. AMENDMENT. Subsection 2 of section 26.1-45-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group certificate policyholder.

SECTION 6. A new subsection to section 26.1-45-05 of the North Dakota Century Code is created and enacted as follows:

Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

SECTION 7. Section 26.1-45-05.2 of the North Dakota Century Code is created and enacted as follows:

26.1-45-05.2. Nursing home policy - Guaranteed renewable for life - Limitation on preexisting conditions. Any long-term care insurance policy or certificate providing benefits for confinement to a nursing home must be guaranteed renewable for life. For purposes of this section, "guaranteed renewable for life" means the insured has the right to continue the policy in force for life subject to the policy's terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy or certificate of insurance providing benefits for confinement to a nursing home which is sold to a consumer in addition to another nursing home policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

SECTION 8. AMENDMENT. Subsection 4 of section 26.1-45-06 of the North Dakota Century Code is amended and reenacted as follows:

4. The limitation on defining a preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection 2 expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection 2.

SECTION 9. AMENDMENT. Section 26.1-45-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-07. Prior institutionalization requirement prohibited.

1. ~~Effective one year after July 12, 1989, no~~ No long-term care insurance policy or certificate may be delivered or issued for delivery in this state if such policy:
  - a. ~~Conditions eligibility for any benefits on a prior hospitalization requirement, or,~~
  - b. ~~Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of such institutional care.~~
  - c. Conditions eligibility for any benefits other than waiver of premium, postconfinement, postacute care, or recuperative benefits on a prior institutionalization requirement.
2. ~~Effective one year after July 12, 1989, a long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in subsection 1 must clearly label such limitations or conditions in the manner prescribed by the commissioner.~~
  - a. A long-term care insurance policy containing postconfinement, postacute care, or recuperative benefits must clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" such

limitations or conditions, including any required number of days of confinement.

- b. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than ten days.
3. No long-term care insurance policy or rider which provides benefits only following institutionalization may condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

SECTION 10. AMENDMENT. Section 26.1-45-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-09. Right to return policy - Outline of coverage required - Contents of certificate - Summary of policy provisions - Report of benefits status.

1. a. Individual long-term care insurance policyholders under sixty-five years of age may return the policy within ten days of its delivery and policyholders at least sixty-five years of age may return the policy within thirty days of its delivery. Any policyholder that returns a policy under this section may have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating that the policyholder has the right to return the policy within ten days of its delivery if the policyholder is under sixty-five years of age and within thirty days after its delivery if the policyholder is at least sixty-five years of age and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.
- b. A person insured under a long-term care insurance policy or certificate issued pursuant to a direct response solicitation may return the policy within thirty days of its delivery and have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies or certificates issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to the first page stating in substance that the insured person may return the policy within thirty days of its delivery and may have the premium refunded if, after examination of the policy, the insured person is not satisfied for any reason. Long-term care insurance applicants have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return

the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in subdivision a of subsection 3 of section 26.1-45-01, the applicant is not satisfied for any reason.

2. a. An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.
  - (1) The commissioner shall prescribe a standard format including style, arrangement, overall appearance, and the content of an outline of coverage.
  - (2) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.
  - (3) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.
- b. The outline of coverage must include:
  - (1) A description of the principal benefits and coverage provided in the policy.
  - (2) A statement of the principal exclusions, reductions, and limitations contained in the policy.
  - (3) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described.
  - (4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains the governing contractual provisions.
  - (5) A description of the terms under which the policy or certificate may be returned and premium refunded.
  - (6) A brief description of the relationship of cost of care and benefits.
3. A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state must include:
  - a. A description of the principal benefits and coverage provided in the policy.

- b. A statement of the principal exclusions, reductions, and limitations contained in the policy.
  - c. A statement that the group master policy determines governing contractual provisions.
4. At the time of policy delivery, a policy summary must be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:
- a. An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
  - b. An illustration on the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;
  - c. Any exclusions, reductions, and limitations on benefits of long-term care; and
  - d. If applicable to the policy type, the summary shall also include:
    - (1) A disclosure of the effects of exercising other rights under the policy;
    - (2) A disclosure of guarantees relating to long-term care costs of insurance charges; and
    - (3) Current and projected maximum lifetime benefits.
5. Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report must be provided to the policyholder. Such report must include:
- a. Any long-term care benefits paid out during the month;
  - b. An explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and
  - c. The amount of long-term care benefits existing or remaining.

SECTION 11. AMENDMENT. Section 26.1-45-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-10. Application. This chapter and section 26.1-36-37 do not supersede the obligations of entities subject to this chapter and section 26.1-36-37 to comply with the substance of other applicable insurance laws insofar as they do not conflict with this chapter and section 26.1-36-37;

except that laws and rules designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or solely as nursing home insurance need not meet the requirements of this chapter and section 26.1-36-37. Any policy or rider advertised, marketed, or offered as long-term care or nursing home insurance must comply with the provisions of this chapter and all other applicable insurance laws insofar as they do not conflict with this chapter.

SECTION 12. Section 26.1-45-11 of the North Dakota Century Code is created and enacted as follows:

26.1-45-11. Rulemaking authority. The commissioner may adopt reasonable rules to establish minimum standards for correcting abusive marketing practices, replacement forms, agent testing, penalties, and reporting practices for long-term care insurance.

SECTION 13. Section 26.1-45-12 of the North Dakota Century Code is created and enacted as follows:

26.1-45-12. Penalties. In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this title relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

SECTION 14. REPEAL. Sections 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36, 26.1-36-36.1, and 26.1-36-37 of the North Dakota Century Code are repealed.

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 305

HOUSE BILL NO. 1242  
(Committee on Industry, Business and Labor)  
(At the request of the Commissioner of Insurance)

### INSURANCE COMPANY REGULATION

AN ACT to create and enact chapter 26.1-06.1, sections 26.1-10-03.1 and 26.1-10-10.1, chapters 26.1-26.2, 26.1-26.3, 26.1-31.1, and 26.1-31.2 of the North Dakota Century Code, relating to rehabilitation and liquidation of insurance companies, insurance broker-controlled property and casualty insurance companies, managing general agents, reinsurance intermediaries, and credit for reinsurance; to amend and reenact subsections 2 and 4 of section 26.1-10-02, subsections 4 and 5 of section 26.1-10-03, sections 26.1-10-04, 26.1-10-05, 26.1-10-10, and 26.1-10-11, relating to insurance holding company systems; to repeal sections 26.1-07-08, 26.1-07-09, 26.1-07-10, 26.1-07-11, 26.1-07-12, 26.1-07-13, 26.1-07-14, 26.1-07-15, 26.1-07-16, 26.1-07-17, 26.1-07-18, 26.1-07-19, and 26.1-07-20, relating to rehabilitation and liquidation of insurance companies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-06.1 of the North Dakota Century Code is created and enacted as follows:

26.1-06.1-01. Construction and purpose.

1. This chapter may not be interpreted to limit the powers granted the commissioner by other provisions of the law.
2. This chapter must be liberally construed to effect the purpose stated in subsection 3.
3. The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public generally; with minimum interference with the normal prerogatives of the owners and managers of insurers, through:
  - a. Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;
  - b. Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;
  - c. Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;
  - d. Equitable apportionment of any unavoidable loss;

- e. Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state;
- f. Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and
- g. Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

26.1-06.1-02. Persons covered. The proceedings authorized by this chapter may be applied to:

- 1. All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future.
- 2. All insurers who purport to do an insurance business in this state.
- 3. All insurers who have insureds residing in this state.
- 4. All persons subject to examination by the commissioner.
- 5. All other persons organized or in the process of organizing with the intent to do an insurance business in this state.
- 6. All nonprofit health service corporations subject to chapter 26.1-17.
- 7. All fraternal benefit societies subject to chapter 26.1-15.1.
- 8. All title insurance companies subject to chapter 26.1-20.
- 9. All health maintenance organizations subject to chapter 26.1-18.
- 10. All prepaid legal service companies subject to chapter 26.1-19.

26.1-06.1-03. Definitions. For the purposes of this chapter:

- 1. "Ancillary state" means any state other than a domiciliary state.
- 2. "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.
- 3. "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under section 26.1-06.1-09. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

4. "Doing business" includes any of the following acts, whether effected by mail or otherwise:
  - a. The issuance or delivery of contracts of insurance to residents of this state;
  - b. The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;
  - c. The collection of premiums, membership fees, assessments, or other consideration for such contracts;
  - d. The transaction of matters subsequent to execution of such contracts and arising out of them;
  - e. Operating under a license or certificate of authority, as an insurer, issued by the commissioner; or
  - f. Any other act specified in section 26.1-02-06 as the transaction of an insurance business.
5. "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.
6. "Fair consideration" is given for property or obligation:
  - a. When in exchange for property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
  - b. When property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.
7. "Foreign country" means any other jurisdiction not in any state.
8. "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
9. "Guaranty association" means the North Dakota insurance guaranty association created by chapter 26.1-42 or the North Dakota life and health insurance guaranty association created by chapter 26.1-38.1, and any other similar entity now or hereafter created by the legislative assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entity now in existence in or hereafter created by the legislature of any other state.

10. "Insolvency" or "insolvent" means:
- a. For an insurer issuing only assessable fire insurance policies:
    - (1) The inability to pay any obligation within thirty days after it becomes payable; or
    - (2) If an assessment be made within thirty days after such date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss.
  - b. For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
    - (1) Any capital and surplus required by law for its organization; or
    - (2) The total par or stated value of its authorized and issued capital stock.
  - c. As to any insurer licensed to do business in this state as of the effective date of this chapter which does not meet the standard established under subdivision b, the term "insolvency" or "insolvent" means, for a period not to exceed three years from the effective date of this chapter, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.
  - d. For purposes of this subsection "liabilities" includes reserves required by statute or by rule, or by specific requirements imposed by the commissioner upon a subject company at the time of admission or a later time.
11. "Insurer" means any person who has done, purports to do, is doing, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by any other state. For purposes of this chapter, any other persons included under section 26.1-06.1-02 shall be deemed to be insurers.
12. "Policyholder" includes a certificate holder.
13. "Preferred claim" means any claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.
14. "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.
15. "Reciprocal state" means any state other than this state in which in substance and effect subsection 1 of section 26.1-06.1-17 and sections 26.1-06.1-51, 26.1-06.1-52, 26.1-06.1-54, 26.1-06.1-55, and 26.1-06.1-56 are in force, and in which provisions are in force

requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

16. "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.
17. "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.
18. "State" means any state, district, or territory of the United States and the Panama Canal Zone.
19. "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

26.1-06.1-04. Jurisdiction and venue.

1. No delinquency proceeding may be commenced under this chapter by anyone other than the commissioner and no court has jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.
2. No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this chapter.
3. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the North Dakota Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:
  - a. If the person served is an agent, broker, or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
  - b. If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a

- delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;
- c. If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
  - d. If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or
  - e. If the person served is obligated to the insurer in any way whatsoever, in any action on, or incident to the obligation.
4. If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.
5. All action herein authorized must be brought in the district court in Burleigh County, North Dakota.

26.1-06.1-05. Injunctions and orders.

1. Any receiver appointed in a proceeding under this chapter may at any time apply for, and any district court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:
- a. The transaction of further business;
  - b. The transfer of property;
  - c. Interference with the receiver or with a proceeding under this chapter;
  - d. Waste of the insurer's assets;
  - e. Dissipation and transfer of bank accounts;
  - f. The institution or further prosecution of any actions or proceedings;
  - g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;
  - h. The levying of execution against the insurer, its assets, or its policyholders;

- i. The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
  - j. The withholding from the receiver of books, accounts, documents, or other records including all written, printed, computer stored, visual, and audiovisual materials relating to the business of the insurer; or
  - k. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.
2. The receiver may apply to any court outside of the state for the relief described in subsection 1.

26.1-06.1-06. Cooperation of officers, owners, and employees.

1. Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter, or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "To cooperate" includes the following:
  - a. To reply promptly in writing to any inquiry from the commissioner requesting a reply;
  - b. To make available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in possession, custody, or control of that person; and
  - c. To be available for oral statements and interviews by the commissioner if so requested.
2. No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.
3. Any person included within subsection 1 who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any valid order issued by the commissioner under this chapter is guilty of a class A misdemeanor and, after a hearing, may be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and may be subject further to the revocation or suspension of any insurance licenses issued by the commissioner.

26.1-06.1-07. Continuation of delinquency proceedings. Every proceeding heretofore commenced under the laws in effect before the enactment

of this chapter shall be deemed to have commenced under this chapter for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had this chapter not been enacted.

26.1-06.1-08. Condition on release from delinquency proceedings. No insurer subject to any delinquency proceedings, whether administrative or judicial, may, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations, or until a plan of repayment by the insurer has been approved by the guaranty associations:

1. Be released from the proceeding, unless the proceeding is converted into a judicial rehabilitation or liquidation proceeding;
2. Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;
3. Be returned to the control of its shareholders or private management; or
4. Have any of its assets returned to the control of its shareholders or private management.

26.1-06.1-09. Court's seizure order.

1. The commissioner may file in the district court of this state a petition alleging, with respect to a domestic insurer:
  - a. That grounds exist which justify a court order for a formal delinquency proceeding against an insurer under this chapter;
  - b. That the interests of policyholders, creditors, or the public will be endangered by delay; and
  - c. The contents of an order deemed necessary by the commissioner.
2. Upon a filing under subsection 1, the court may issue forthwith, ex parte, and without a hearing the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and, until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.
3. The court shall specify in the order the duration of the order which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems necessary after such notice as it deems appropriate, and may modify the terms or duration of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this



chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall ipso facto vacate the seizure order.

4. Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.
5. An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of the order for a hearing and review of the order. The court shall hold a hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers and it shall be so held if the insurer proceeded against so requests.
6. If, at any time after the issuance of a seizure order under this section, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

26.1-06.1-10. Confidentiality of hearings. In all proceedings and judicial reviews thereof under section 26.1-06.1-09, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless and until the district court, after hearing arguments from the parties in chambers, orders otherwise; or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by the clerk in a confidential file.

26.1-06.1-11. Grounds for rehabilitation. The commissioner may apply by petition to the district court for an order authorizing the rehabilitation of a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

1. The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
2. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration, or diversion of the insurer's assets, forgery, or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.
3. The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.
4. Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy.

5. Any person, whether an officer, manager, general agent, director, trustee, employee, or other person, who in fact has executive authority in the insurer, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere.
6. After demand by the commissioner pursuant to the provisions of sections 26.1-03-19 through 26.1-03-21, or pursuant to the provisions of this chapter, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.
7. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 26.1-10 or 26.1-07, substantially its entire property or business, or has entered into any other transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
8. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might remove the insurer or its property from the jurisdiction of this state, or might prejudice orderly delinquency proceedings under this chapter.
9. Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner.
10. The insurer has failed to pay within sixty days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter except that the nonpayment shall not be a ground until sixty days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.
11. The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to immediately respond with an adequate explanation.
12. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities, request or consent to rehabilitation under this chapter.

13. Has been found after examination that, in the case of a stock insurance company, its minimum basic paid-in capital required by section 26.1-05-04 is impaired, or that, in the case of a domestic mutual insurance company, its surplus required by sections 26.1-12-08 and 26.1-12-10 is impaired.

26.1-06.1-12. Rehabilitation orders.

1. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and successor commissioners in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the clerk of the district court or register of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.
2. Any order issued under this section shall require accounting to the court by the rehabilitator. Accounting shall be at such intervals as the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under subsection 4 of section 26.1-06.1-13 will be prepared by the rehabilitator and the timetable for doing so.
3. Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless such revocation or cancellation is done by the rehabilitator pursuant to section 26.1-06.1-13.

26.1-06.1-13. Powers and duties of the rehabilitator.

1. The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the commissioner, with the approval of the court and shall be paid out of the funds or assets of the insurer. The commissioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. The committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or the court in rehabilitation proceedings conducted under this chapter.

2. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available money of the insurer.
3. The rehabilitator may take such action deemed necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct and manage, to hire, and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.
4. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.
5. If it is determined that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period, and to such an extent as may be necessary.
6. The rehabilitator shall have the power under sections 26.1-06.1-25 and 26.1-06.1-26 to avoid fraudulent transfers.

26.1-06.1-14. Actions by and against rehabilitator.

1. Whenever any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending at the time a rehabilitation order against the insurer is entered, the court before which the action or proceeding is pending shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as deemed necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall

petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

2. No statute of limitations or defense of laches shall run with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.
3. Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

26.1-06.1-15. Termination of rehabilitation.

1. Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection shall have the same effect as a petition under section 26.1-06.1-16. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.
2. The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under subsection 4 of section 26.1-06.1-13, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.
3. The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the district court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 26.1-06.1-11 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

26.1-06.1-16. Grounds for liquidation. The commissioner may petition the district court for an order directing the liquidation of a domestic insurer or an alien insurer domiciled in this state on the basis:

1. Of any ground for an order of rehabilitation as specified in section 26.1-06.1-11, whether or not there has been a prior order directing the rehabilitation of the insurer;
2. That the insurer is insolvent; or
3. That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

26.1-06.1-17. Liquidation orders.

1. An order to liquidate the business of a domestic insurer shall appoint the commissioner and successor commissioners in office as liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the register of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.
2. Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the date of entry of the order of liquidation, except as provided in sections 26.1-06.1-18 and 26.1-06.1-36.
3. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.
4. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.
5. Any order issued under this section shall require financial reports to the court by the liquidator. Financial reports must include the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports must be filed within one year of the liquidation order and at least annually thereafter.

6. a. Within five days of the effective date of this section, or, if later, within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the commissioner, or any deputies, agents, clerks, assistants, or attorneys employed or appointed by the commissioner by any party based on preference in an appeal pendency plan approved by the court.
- b. The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.
- c. Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty association.

26.1-06.1-18. Continuance of coverage.

1. All policies, including bonds and other noncancelable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only until the earlier of:
- a. Thirty days from the date of entry of the liquidation orders;
- b. The expiration of the policy coverage;

- c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;
  - d. The liquidator has effected a transfer of the policy obligation pursuant to subdivision i of subsection 1 of section 26.1-06.1-20; or
  - e. The date proposed by the liquidator and approved by the court to cancel coverage.
2. An order of liquidation under section 26.1-06.1-17 shall terminate coverages at the time specified in subsection 1 for purposes of any other statute.
  3. Policies of life or health insurance or annuities shall continue in force for such period and under such terms as provided for by any applicable guaranty association or foreign guaranty association.
  4. Policies of life or health insurance or annuities, or any period or coverage of such policies, not covered by a guaranty association or foreign guaranty association shall terminate under subsections 1 and 2.

26.1-06.1-19. Dissolution of insurer. The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time of application for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

26.1-06.1-20. Powers of liquidator.

1. The liquidator shall have the power:
  - a. To appoint a special deputy or deputies and to determine their reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section.
  - b. To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator may deem necessary to assist in the liquidation.
  - c. To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary. The committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or the court in liquidation proceedings conducted under this chapter.



- d. To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court.
- e. To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available moneys of the insurer.
- f. To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to their testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, or other documents the liquidator deems relevant to the inquiry.
- g. To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.
- h. To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for the following purposes:
  - (1) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
  - (2) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as deemed best; and
  - (3) To pursue any creditor's remedies available to enforce his claims.
- i. To conduct public and private sales of the property of the insurer.
- j. To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 26.1-06.1-41.
- k. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator

shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

- l. To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class one under the priority of distribution.
- m. To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.
- n. To continue to prosecute and to institute in the name of the insurer or in the name of the liquidator, any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 26.1-06.1-19, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.
- o. To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.
- p. To remove any or all records and property of the insurer to the offices of the commissioner or to another place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.
- q. To deposit in one or more banks in this state any amounts of money required for meeting current administration expenses and dividend distributions.
- r. To invest all moneys not currently needed, unless the court orders otherwise.
- s. To file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located.
- t. To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation

and may defend only in the absence of a defense by such guaranty associations.

- u. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included in section 26.1-06.1-25, 26.1-06.1-26, or 26.1-06.1-27.
  - v. To intervene in any proceeding, wherever instituted, that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.
  - w. To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
  - x. To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this chapter.
2. a. If a company placed in liquidation issued liability policies on a claims-made basis, which provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated herein. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.
- b. The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. The offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees shall be due on the charge pertaining to the extended period to report claims.
3. The enumeration of the powers and authority of the liquidator in this section shall not be construed as a limitation upon the liquidator, nor shall it exclude in any manner the liquidator's right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.
4. Notwithstanding the powers of the liquidator as stated in subsections 1 and 2, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

26.1-06.1-21. Notice to creditors and others.

1. Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:
  - a. By first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;
  - b. By first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;
  - c. By first-class mail to all insurance agents of the insurer;
  - d. By first-class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and
  - e. By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.
2. Except as otherwise established by the liquidator with approval of the court, notice to potential claimants under subsection 1 shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 26.1-06.1-35, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.
3. a. Notice under subsection 1 to agents of the insurer and to potential claimants who are policyholders must include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.
  - b. The liquidator shall promptly provide to the guaranty associations any information concerning the identities and addresses of the policyholders and their policy coverages in the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.
4. If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

26.1-06.1-22. Duties of agents.

1. Every agent who receives notice in the form prescribed in section 26.1-06.1-21 that an insurer represented by that agent is the subject of a liquidation order, shall within thirty days of such notice provide to the liquidator, in addition to the information the agent may be required to provide pursuant to section 26.1-06.1-06, the information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through a subagent under contract with the agent, including the name and address of the subagent. A policy shall be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had possession of a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.
2. Any agent failing to provide information to the liquidator as required in subsection 1 may, following a hearing held by the commissioner, be subject to license suspension and payment of a penalty of not more than one thousand dollars.

#### 26.1-06.1-23. Actions by and against liquidator.

1. Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration shall be brought against the insurer or liquidator, whether in this state or elsewhere, nor shall any existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. In any action in which the liquidator intervenes under this section, the liquidator may defend the action at the expense of the estate of the insurer.
2. The liquidator may, upon or after an order for liquidation, within two years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of

or permitted to the insurer, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

3. No statute of limitation or defense of laches shall run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.
4. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

26.1-06.1-24. Collection and list of assets.

1. As soon as practicable after the liquidation order, but not later than one hundred twenty days thereafter, unless extended by order of the court, the liquidator shall prepare in duplicate a list of the insurer's assets. The list shall be amended or supplemented from time to time as the liquidator may determine. One copy shall be filed in the office of the clerk of the district court and one copy shall be retained for the liquidator's files. All amendments and supplements shall be similarly filed.
2. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.
3. A submission to the court for disbursement of assets in accordance with section 26.1-06.1-33 fulfills the requirements of subsection 1 of this section.

26.1-06.1-25. Fraudulent transfers prior to petition.

1. Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

2.
  - a. A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection 3 of section 26.1-06.1-27.
  - b. A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
  - c. A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.
  - d. Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.
  - e. The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.
3. Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection 1 if:
  - a. The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and
  - b. Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.
4. Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection 1 shall be personally liable therefore and shall be bound to account to the liquidator.

#### 26.1-06.1-26. Fraudulent transfer after petition.

1. After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid therefore, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of

- the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.
2. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:
- a. A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid therefore, for which amount the transferee shall have a lien on the property so transferred.
  - b. A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same effect as if the petition were not pending.
  - c. A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith.
  - d. A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.
3. Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection 1 shall be personally liable therefore and shall be bound to account to the liquidator.
4. Nothing in this chapter shall impair the negotiability of currency or negotiable instruments.

26.1-06.1-27. Voidable preferences and liens.

1. a. A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or



within two years before the filing of the successful petition for liquidation, whichever time is shorter.

b. Any preference may be avoided by the liquidator if:

- (1) The insurer was insolvent at the time of the transfer;
- (2) The transfer was made within four months before the filing of the petition;
- (3) The creditor receiving it or to be benefited thereby or the creditor's agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
- (4) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not that person held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer, or any other person, firm, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

c. Where the preference is voidable, the liquidator may recover the property or, if it has been converted, the liquidator may recover its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

2. a. A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.
- b. A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
- c. A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.
- d. A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

- e. The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.
3. a. A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.
- b. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection 2, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection 2 through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.
4. A transfer of property for or on account of a new and contemporaneous consideration which is deemed under subsection 2 to be made or suffered after the transfer because of delay in perfecting it, does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.
5. If any lien deemed voidable under subdivision b of subsection 1 has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.
6. The property affected by any lien deemed voidable under subsections 1 and 5 shall be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

7. The district court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the liquidator of its value, as ascertained by the court, within such reasonable times as the court shall fix.
8. The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or, where the property is retained under subsection 7, to the extent of the amount paid to the liquidator.
9. If a creditor has been preferred, and afterward in good faith gives the insurer further credit, without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.
10. If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of the reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefits of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney at law for services rendered or to be rendered shall be governed by the provision of subparagraph 4 of subdivision b of subsection 1.
11. a. Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when that person has reasonable cause to believe the insurer is insolvent or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to believe the insurer is insolvent or is about to become insolvent if the transfer was made within four months prior to the date of filing of the successful petition for liquidation.

b. Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection 1 shall be personally liable therefor and shall be bound to account to the liquidator.

c. Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

26.1-06.1-28. Claims of holders of void or voidable rights.

1. No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter shall be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

2. A claim allowable under subsection 1 by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused last filing under section 26.1-06.1-34 if filed within thirty days from the date of the avoidance, or within the further time allowed by the court under subsection 1.

26.1-06.1-29. Setoffs.

1. Mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, shall be set off and the balance only shall be allowed or paid, except as provided in subsections 2, 3, and 4 and section 26.1-06.1-32.

2. No setoff shall be allowed in favor of any person where:

a. The obligation of the insurer to the person would not at the date of filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

b. The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

c. The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;

d. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;

e. The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay

a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

- f. The obligations between the person and the insurer arise from business which is both ceded to and assumed from the insurer except that the rehabilitator may, with regard to such business, allow certain setoffs in rehabilitation if the liquidator finds the allowance of the setoffs appropriate.
3. The liquidator shall provide persons that assumed business from the insurer with accounting statements identifying debts which are currently due and payable. Such persons may set off against such debts only mutual credits which are currently due and payable by the insurer to such persons for the period covered by the accounting statement.
4. A person that ceded business to the insurer may set off debts due the insurer against only those mutual credits which the person has paid or which have been allowed in the insurer's delinquency proceeding.
5. Notwithstanding the foregoing, a setoff of sums due on obligations in the nature of those set forth in subdivision f of subsection 2 shall be allowed for those sums accruing from business written where the contracts were entered into, renewed, or extended with the express written approval of the commissioner of insurance of the state of domicile of the now insolvent insurer, when in the judgment of such commissioner it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of the commissioner's regulatory responsibilities.
6. These amendments shall become effective six months from the date of enactment and shall apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any contract including those in existence prior to the effective date, and shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer. For purposes of this section, any change in the terms of, or consideration for, any such contract shall be deemed an amendment.

#### 26.1-06.1-30. Assessments.

1. As soon as practicable but not more than two years from the date of an order of liquidation under section 26.1-06.1-17 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:
  - a. The reasonable value of the assets of the insurer;
  - b. The insurer's probable total liabilities;

- c. The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
  - d. A recommendation as to whether or not an assessment should be made and in what amount.
- 2. a. Upon the basis of the report provided in subsection 1, including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.
- b. Subject to any applicable legal limits on assessability, the aggregate assessment shall be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.
- 3. After levy of assessment under subsection 2, the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order, to show cause why the liquidator should not pursue a judgment therefor.
- 4. The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to the member's last known address as it appears on the insurer's records, at least twenty days before the return day of the order to show cause.
- 5. a. If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection 3, the court shall make an order adjudging the member liable for the amount of the assessment against the member pursuant to subsection 3, together with costs, and the liquidator shall have a judgment against the member therefor.
- b. If, on or before the return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. In the event that the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.
- 6. The liquidator may enforce any order or collect any judgment under subsection 5 by any lawful means.

26.1-06.1-31. Reinsurer's liability. The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

1. a. An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs, or both, shall not be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured.
  - b. An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.
  2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:
    - a. Suspend or revoke or refuse to renew the licenses of such offending party or parties.
    - b. Impose a penalty of not more than one thousand dollars for each and every act in violation of this section by said party or parties.
  3. Before taking any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, if a violation is found to have been made, the commissioner shall impose any of the penalties under subsection 2 as deemed advisable.
  4. When the commissioner takes action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from said action to the district court.
- 26.1-06.1-33. Domiciliary liquidator's proposal to distribute assets.
1. Within one hundred twenty days of a final determination of insolvency of an insurer by the district court, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets, from time to time as the assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are insufficient assets to disburse, the application required by this section shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

2. The proposal to disburse assets referred to in subsection 1 shall at least include provisions for:
  - a. Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and the payment of claims falling within the priorities established in section 26.1-06.1-41, classes one and two;
  - b. Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available;
  - c. Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;
  - d. The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 26.1-06.1-41 in accordance with such priorities. No bond shall be required of any such association; and
  - e. A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.
3. The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.
4. The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.
5. Notice of such application shall be given to the association in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with subdivisions a and b of subsection 2.



26.1-06.1-34. Filing of claims.

1. Proof of all claims shall be filed with the liquidator in the form required by section 26.1-06.1-35 on or before the last day for filing specified in the notice required under section 26.1-06.1-21, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.
2. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant did not file late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under any of the following circumstances:
  - a. The existence of the claim was not known to the claimant and the claim was filed promptly once the claim became known to the claimant.
  - b. A transfer to a creditor was avoided under sections 26.1-06.1-25, 26.1-06.1-26, and 26.1-06.1-27, or was voluntarily surrendered under section 26.1-06.1-28, and the filing satisfies the conditions of section 26.1-06.1-28.
  - c. The valuation under section 26.1-06.1-40, of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.
3. The liquidator shall permit late filing claims to share in distribution, whether past or future, as if the claims were not filed late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing where such payments were made and expenses incurred as provided by law.
4. The liquidator may consider any claim filed late which is not covered by subsection 2, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late filing claimant shall receive, at each distribution, the same percentage of the amount allowed on the late filed claim as is then being paid to claimants of any lower priority. This shall continue until the late filed claim has been paid in full.

26.1-06.1-35. Proof of claim.

1. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:
  - a. The particulars of the claim including the consideration given for it;
  - b. The identity and amount of the security on the claim;
  - c. The payments made on the debt, if any;

- d. That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
  - e. Any right of priority of payment or other specific right asserted by the claimants;
  - f. A copy of the written instrument which is the foundation of the claim; and
  - g. The name and address of the claimant and the attorney who represents the claimant, if any.
2. No claim need be considered or allowed if it does not contain all the information in subsection 1 which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.
  3. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection 1 and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.
  4. No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of the amount of damages. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the amount of damages.
  5. All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

#### 26.1-06.1-36. Special claims.

1. The claim of a third party which is contingent only on first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.
2. A claim may be allowed even if contingent, if it is filed in accordance with section 26.1-06.1-34. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.
3. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.
4. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under section 26.1-06.1-12 or 26.1-06.1-17.

26.1-06.1-37. Special provisions for third party claims.

1. Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.
2. Whether or not the third party files a claim, the insured may file a claim in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 26.1-06.1-21, whichever is later, the insured is an unexcused late filer.
3. The liquidator shall make recommendations to the court under section 26.1-06.1-41, for the allowance of an insured's claim under subsection 2 after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend recommendations made to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it deems appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:
  - a. The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense; or
  - b. The amount allowed on the claims by the court.

After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator.

4. If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as in subsection 3. If any insured's claim is subsequently reduced under subsection 3, the amount thus freed shall be apportioned ratably among the claims which have been reduced under this subsection.
5. No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

26.1-06.1-38. Disputed claims.

1. When a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections to the determination with the liquidator. If no such filing is made, the claimant may not further object to the determination.
2. Whenever objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with a recommendation.

26.1-06.1-39. Claims of surety. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that the other person discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution; however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for such other person. The term "other person" as used in this section is not intended to apply to a guaranty association or foreign guaranty association.

26.1-06.1-40. Secured creditor's claims.

1. The value of any security held by a secured creditor shall be determined in one of the following ways, as the court may direct:
  - a. By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or
  - b. By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.
2. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

26.1-06.1-41. Priority of distribution. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class

shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

1. Class 1. The costs and expenses of administration during rehabilitation and liquidation, including the following:
  - a. The actual and necessary costs of preserving or recovering the assets of the insurer;
  - b. Compensation for all authorized services rendered in the rehabilitation and liquidation;
  - c. Any necessary filing fees;
  - d. The fees and mileage payable to witnesses;
  - e. Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and
  - f. The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.
2. Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for service performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.
3. Class 3. All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third party claims and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to employees shall be treated as a gratuity.
4. Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors including claims of ceding and assuming companies in their capacity as such.
5. Class 5. Claims of the federal or any state or local government except those under class 3 above. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or

forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection 8.

6. Class 6. Claims filed late or any other claims other than claims under subsections 7 and 8.
7. Class 7. Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.
8. Class 8. The claims of shareholders or other owners in their capacity as shareholders.

26.1-06.1-42. Liquidator's recommendations to the court.

1. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as deemed necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes shall be determined under section 26.1-06.1-38. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer along with the recommendations of the liquidator. The report shall include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.
2. The court may approve, disapprove, or modify the report on claims by the liquidator. The reports which are not modified by the court within a period of sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section 26.1-06.1-38. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

26.1-06.1-43. Distribution of assets. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

26.1-06.1-44. Unclaimed and withheld funds.

1. All unclaimed funds subject to distribution remaining under the liquidator's control when the liquidator is ready to apply to the court for discharge, including the amount distributable to any

creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the state treasurer, and shall be paid without interest except in accordance with section 26.1-06.1-41 to the person entitled thereto or the person's legal representative upon proof satisfactory to the state treasurer of the person's right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the general fund.

2. All funds withheld under section 26.1-06.1-36 and not distributed shall upon discharge of the liquidator be deposited with the state treasurer and paid out in accordance with section 26.1-06.1-41. Any sums remaining which under section 26.1-06.1-41 would revert to the undistributed assets of the insurer shall be transferred to the state treasurer and become the property of the state under subsection 1, unless the commissioner petitions the court to reopen the liquidation under section 26.1-06.1-46.

#### 26.1-06.1-45. Termination of proceedings.

1. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be deemed appropriate.
2. Any other person may apply to the court at any time for an order under subsection 1. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

26.1-06.1-46. Reopening liquidation. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

26.1-06.1-47. Disposition of records during and after termination of liquidation. Whenever it appears to the commissioner that the records of any liquidated insurer or any insurer in the process of liquidation are no longer useful, the commissioner may recommend to the court and the court direct which records should be retained for future reference and which records should be destroyed.

26.1-06.1-48. External audit of the receiver's books. The district court may, as it deems necessary, cause audits to be made of the books of the commissioner relating to any receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

26.1-06.1-49. Conservation of property of foreign or alien insurers found in this state.

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:
  - a. Any of the grounds in section 26.1-06.1-11;
  - b. That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
  - c. That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent; and
  - d. (1) That its certificate of authority to do business in this state has been revoked or that none was ever issued; and  
(2) That there are residents of this state with outstanding claims or outstanding policies.
2. When an order is sought under subsection 1, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.
3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the district court or the register of deeds of the county in which the principal business of the company is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.
4. The conservator may at any time petition for and the court may grant an order under section 26.1-06.1-50 to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, an order to be appointed ancillary receiver under section 26.1-06.1-52.
5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied, all costs shall be assessed against the moving party.

26.1-06.1-50. Liquidation of property of foreign or alien insurers found in this state.

1. If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:



- a. Any of the grounds in section 26.1-06.1-11 or 26.1-06.1-16; or
  - b. Any of the grounds specified in subdivisions b, c, and d of subsection 1 of section 26.1-06.1-49.
2. When an order is sought under subsection 1, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.
  3. If it shall appear to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the clerk of the district court or the register of deeds of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.
  4. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 26.1-06.1-52. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 26.1-06.1-52.
  5. On the same grounds as are specified in subsection 1, the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state.
  6. Once the assets of a foreign or alien insurer have been liquidated by the commissioner under this section, the court may order the commissioner to pay claims or residents of this state against the insurer under such rules as to the liquidation of insurers under this chapter as are otherwise compatible with the provisions of this section.

26.1-06.1-51. Domiciliary liquidators in other states.

1. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims under subsection 3 of section 26.1-06.1-52, be vested by operation of law with the title to all of the assets, property, contracts and rights of action, agents' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting or property in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain

possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 26.1-06.1-52.

2. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state shall be vested by operation of law with the title to all of the property, contracts and right of action, and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 26.1-06.1-49 or 26.1-06.1-50, or for an ancillary receivership under section 26.1-06.1-52, or after approval by the district court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.
3. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

26.1-06.1-52. Ancillary formal proceedings.

1. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:
  - a. If the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or
  - b. If the protection of creditors or policyholders in this state so requires.
2. The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the register of deeds in this state imparts that same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds.
3. When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and deputies of the ancillary receiver shall have the same powers and

be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

4. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties, and powers to those provided in subsection 3 for ancillary receivers appointed in this state.

26.1-06.1-53. Ancillary summary proceedings. The commissioner has sole discretion to institute proceedings under sections 26.1-06.1-09 and 26.1-06.1-10 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

26.1-06.1-54. Claims of nonresidents against insurers domiciled in this state.

1. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.
2. Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this chapter, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in subsection 2 of section 26.1-06.1-55 with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states shall be conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but shall not be conclusive with respect to priorities against general assets under section 26.1-06.1-41.

26.1-06.1-55. Claims of residents against insurers domiciled in reciprocal states.

1. In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.
2. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state. If a claimant elects to prove a claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 26.1-06.1-34 and 26.1-06.1-35. The ancillary receiver shall make a

recommendation to the court as under section 26.1-06.1-42. The ancillary receiver shall also arrange a date for hearing if necessary under section 26.1-06.1-38 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. If the domiciliary liquidator, within thirty days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of intention to contest the claim, the domiciliary liquidator shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.

3. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

26.1-06.1-56. Attachment, garnishment, and levy of execution. During the pendency of a liquidation proceeding in this or any other state, whether the liquidation proceeding is identified as such or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution shall be commenced or maintained in this state against the delinquent insurer or its assets.

26.1-06.1-57. Interstate priorities.

1. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.
2. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.
3. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file a claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 26.1-06.1-40, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

26.1-06.1-58. Subordination of claims for noncooperation. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within the control of the ancillary receiver, other than

special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under subsection 7 of section 26.1-06.1-41.

26.1-06.1-59. Separability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

\* SECTION 2. AMENDMENT. Subsections 2 and 4 of section 26.1-10-02 of the North Dakota Century Code are amended and reenacted as follows:

2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections, a domestic insurance company may also:

a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of five percent of the insurance company's admitted assets or fifty percent of the company's surplus as regards policyholders; provided, that after the investments the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there must be included:

(1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

b. ~~If the insurance company's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than ten percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that after the investment the company's surplus as regards policyholders, considering the investment as if it were a disallowed asset, will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.~~

c. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in subsection 1 and

\* NOTE: Section 26.1-10-02 was also amended by section 8 of Senate Bill No. 2266, chapter 301.

subdivision a of subsection 2. "The total investment of the insurance company" includes:

- (1) Any direct investment by the company in an asset.
- (2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.

~~d. c.~~ With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after such investment the insurance company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.

~~e.~~ Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurance company would be considered as a disallowed asset, the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs, and if following the investment all voting securities of the subsidiary would be owned by the company.

4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.

SECTION 3. AMENDMENT. Subsections 4 and 5 of section 26.1-10-03 of the North Dakota Century Code are amended and reenacted as follows:

4. The commissioner shall approve any merger or other acquisition of control referred to in subsection 1 unless, after a public hearing, the commissioner finds that:
  - a. After the change of control, the domestic insurance company referred to in subsection 1 would not be able to satisfy the requirements for the issuance of a certificate of authority to write the lines of insurance for which it is presently licensed.
  - b. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.
  - c. The financial condition of any acquiring party might jeopardize the financial stability of the insurance company, or prejudice

the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party.

- d. ~~The terms of the offer, request, invitation, agreement, or acquisition referred to in subsection 1 are unfair and unreasonable to the securityholders of the insurance company.~~
- e- The plans or proposals which the acquiring party has to liquidate the insurance company, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the company and not in the public interest.
- f. e. The competence, experience, and integrity of those persons who would control the operation of the insurance company are such that it would not be in the interest of policyholders of the company and of the public to permit the merger or other acquisition of control.
- f. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

The commissioner shall hold the public hearing referred to in this subsection within thirty days after the statement required by subsection 1 is filed, and shall give at least twenty days' notice to the person filing the statement. Not less than seven days' notice of the hearing must be given by the person filing the statement to the insurance company and to other persons designated by the commissioner. ~~The insurance company shall give notice to its securityholders.~~ The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurance company, any person to whom notice of hearing was sent, and any other person whose interests may be affected have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith are entitled to conduct discovery proceedings in the same manner allowed in district court of this state. All discovery proceedings must be concluded not later than three days prior to the hearing. The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

- 5- ~~The insurance company shall mail all statements, amendments, or other material filed pursuant to subsection 1 or 2, and all notices of public hearings held pursuant to subsection 4, to its shareholders within five business days after receipt by the company. The person making the filing shall bear the expenses of mailing. As security for the payment of the expenses, the person shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.~~

SECTION 4. Section 26.1-10-03.1 of the North Dakota Century Code is created and enacted as follows:

26.1-10-03.1. Acquisitions involving insurance companies not otherwise covered.

1. For the purpose of this section:
  - a. "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.
  - b. An "involved insurance company" includes an insurance company which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
2.
  - a. Except as exempted in subdivision b of this subsection, this section applies to any acquisition in which there is a change in control of an insurance company authorized to do business in this state.
  - b. This section does not apply to the following:
    - (1) An acquisition subject to approval or disapproval by the commissioner pursuant to section 26.1-10-03;
    - (2) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under subsection 2 of section 26.1-10-01, it is not solely for investment purposes unless the commissioner of the insurance company's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
    - (3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subdivision 1 of subsection 3 thirty days prior to the proposed effective date of the acquisition. However, the preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subdivision;
    - (4) The acquisition of already affiliated persons;
    - (5) An acquisition if, as an immediate result of the acquisition:
      - (a) In no market would the combined market share of the involved insurance companies exceed five percent of the total market;



- (b) There would be no increase in any market share; or
- (c) In no market would the combined market share of the involved insurance companies exceed twelve percent of the total market, and in no market would the market share increase by more than two percent of the total market.

For the purpose of paragraph 5 of subdivision b, a "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurance companies licensed to do business in this state;

- (6) An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
- (7) An acquisition of an insurance company whose domiciliary commissioner affirmatively finds that the insurance company is in failing condition; there is a lack of feasible alternative to improving the insurance company's condition; the public benefits of improving the insurance company's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner to the commissioner of this state.

3. An acquisition covered by subsection 2 may be subject to an order pursuant to subsection 5 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 26.1-10-07.

- a. The preacquisition notification must be in the form and contain the information prescribed by the national association of insurance commissioners relating to those markets which, under paragraph 5 of subdivision b of subsection 2, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information as he deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection 4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating that person's ability to render an informed opinion.
- b. The waiting period required begins on the date of receipt of the commissioner of a preacquisition notification and ends on the earlier of the thirtieth day after the date of its receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a

one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

4. a. The commissioner may enter an order under subdivision a of subsection 5 with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly therein or if the insurance company fails to file adequate information in compliance with subsection 3.
- b. In determining whether a proposed acquisition would violate the competitive standard of subdivision a of this subsection, the commissioner shall consider the following:

- (1) Any acquisition covered under subsection 2 involving two or more insurance companies competing in the same market is prima facie evidence of violation of the competitive standards:

- (a) If the market is highly concentrated and the involved insurance companies possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

- (b) Or, if the market is not highly concentrated and the involved insurance companies possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurance companies is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurance companies are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in subdivision a of this subsection. For the purpose of this paragraph, the insurance company with the largest share of the market shall be deemed to be insurer A.

- (2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurance companies in the market,

from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection 2 involving two or more insurance companies competing in the same market is prima facie evidence of violation of the competitive standard in subdivision a of this subsection if:

- (a) There is a significant trend toward increased concentration in the market;
  - (b) One of the insurance companies involved is one of the insurance companies in a grouping of large insurance companies showing the requisite increase in the market share; and
  - (c) Another involved insurance company's market is two percent or more.
- (3) For the purposes of subdivision b of subsection 4:
- (a) The term "insurance company" includes any company or group of companies under common management, ownership, or control;
  - (b) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the national association of insurance commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurance companies doing business in this state, and the relevant geographical market is assumed to be this state.
  - (c) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.
- (4) Even though an acquisition is not prima facie violative of the competitive standard under paragraphs 1 and 2 of this subdivision, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraphs 1 and 2 of this subdivision, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not

limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.

- c. An order may not be entered under subdivision a of subsection 5 if:
- (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
  - (2) The acquisition will substantially increase the availability of insurance, and the public benefits of such increase exceed the public benefits which would arise from not lessening competition.
5. a. If an acquisition violates the standards of this section, the commissioner may enter an order:
- (1) Requiring an involved insurance company to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation, or
  - (2) Denying the application of an acquired or acquiring insurance company for a license to do business in this state.
- b. The order may not be entered unless there is a hearing, notice of such hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the hearing, and the hearing is concluded and the order is issued no later than sixty days after the end of the waiting period. Every order must be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- c. An order entered under this subsection may not become final sooner than thirty days after it is issued, during which time the involved insurance company may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.
- d. An order pursuant to this subsection does not apply if the acquisition is not consummated.
- e. Any person who violates a cease and desist order of the commissioner under this subsection and while the order is in effect, may after notice and hearing and upon order of the

commissioner, be subject at the discretion of the commissioner to any one or both of the following:

- (1) A monetary penalty of not more than ten thousand dollars for every day of violation.
  - (2) Suspension or revocation of such person's license.
- f. Any insurance company or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any such filing requirement, shall be subject to a fine of not more than fifty thousand dollars.
- g. Subsections 2 and 3 of section 26.1-10-08 and section 26.1-10-10 do not apply to acquisitions covered under subsection 2.

SECTION 5. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-04. Registration - Amendments - Termination - Alternative registration - Exceptions - Disclaimer - Violation.

1. Every insurance company which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurance company subject to disclosure requirements and standards adopted by statute or rule in the jurisdiction of its domicile which are substantially similar to those contained in this section and section 26.1-10-05. Any insurance company subject to registration under this section shall register before August 31, 1981, or fifteen days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurance company which is a member of a holding company system not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of the domiciliary jurisdiction.
2. Every insurance company subject to registration shall file a registration statement on a form approved by the commissioner, which must contain current information about:
  - a. The capital structure, general financial condition, ownership, and management of the insurance company and any person in control of the insurance company.
  - b. The identity of every member of the insurance holding company system.
  - c. The following agreements in force, relationships subsisting, and transactions currently outstanding between the insurance company and its affiliates:

- (1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurance company or of the insurance company by its affiliates.
  - (2) Purchases, sales, or exchange of assets.
  - (3) Transactions not in the ordinary course of business.
  - (4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurance company's assets to liability, other than insurance contracts entered into in the ordinary course of the insurance company's business.
  - (5) All management and service contracts and all cost-sharing arrangements, ~~other than cost allocation arrangements based upon generally accepted accounting principles.~~
  - (6) Reinsurance agreements ~~covering all or substantially all of one or more lines of insurance of the ceding company.~~
  - (7) Dividends and other distributions to shareholders.
  - (8) Consolidated tax allocation agreements.
- d. Any pledge of the insurance company's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.
- e. Other matters concerning transactions between registered insurance companies and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.
3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent or less of an insurance company's admitted assets as of December thirty-first next preceding are not material for purposes of this section.
  4. Each registered insurance company shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms approved by the commissioner within fifteen days after the end of the month in which it learns of each change or addition; provided, however, that subject to subsection 3 of section 26.1-10-05, each registered insurance company shall report all dividends and other distributions to shareholders within ~~two~~ ten business days following the declaration thereof.
  5. The commissioner shall terminate the registration of any insurance company which demonstrates that it no longer is a member of an insurance holding company system.

6. The commissioner may require or allow two or more affiliated insurance companies subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
7. The commissioner may allow an insurance company which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurance company which is required to register under subsection 1 to file all information and material required to be filed under this section.
8. This section does not apply to any insurance company, information, or transaction if and to the extent excepted by the commissioner by rule or order.
9. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurance company or a disclaimer may be filed by the insurance company or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurance company as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurance company is relieved of any duty to register or report under this section which arises out of the insurance company's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
10. All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
11. Any person within an insurance holding company system subject to registration must provide complete and accurate information to an insurance company, where the information is reasonably necessary to enable the insurance company to comply with the provisions of this chapter.
12. The failure to file a registration statement or any amendment summary of the registration statement thereto required by this section within the time specified for the filing is a violation of this section.

SECTION 6. AMENDMENT. Section 26.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-05. Standards - Transactions with affiliates - Adequacy of surplus - Dividends and other distributions.

1. Material transactions by registered insurance companies with their affiliates are transactions within a holding company system to which an insurance company subject to registration is a party shall be subject to the following standards:

- a. The terms must be fair and reasonable.
  - b. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions.
  - c. The insurance company's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs.
  - d. Charges or fees for services performed must be reasonable.
  - e. Expenses incurred and payment received must be allocated to the insurance company in conformity with customary insurance accounting practices consistently applied.
2. The following transactions involving a domestic insurance company and any person in its holding company system may not be entered into unless the insurance company has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period.
- a. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided the transactions are equal to or exceed:
    - (1) With respect to nonlife insurance companies, the lesser of three percent of the insurance company's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.
    - (2) With respect to life insurance companies, three percent of the insurance company's admitted assets as of December thirty-first next preceding.
  - b. Loans or extensions of credit to any person who is not an affiliate, where the insurance company makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurance company making the loans or extensions of credit provided the transactions are equal to or exceed:
    - (1) With respect to nonlife insurance companies, the lesser of three percent of the insurance company's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.
    - (2) With respect to life insurance companies, three percent of the insurance company's admitted assets as of December thirty-first next preceding.



- c. Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurance company's liabilities equals or exceeds five percent of the insurance company's surplus as regards policyholders, as of December thirty-first next preceding, including those agreements which may require as consideration the transfer of assets from an insurance company to a nonaffiliate, if an agreement or understanding exists between the insurance company and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurance company.
- d. All management agreements, service contracts, and all cost-sharing arrangements.
- e. Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurance company's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurance company which is not a member of the same holding company system, would be otherwise contrary to law.

- 3. A domestic insurance company may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, he may exercise his authority under the penalty sections of this chapter.
- 4. The commissioner, in reviewing transactions pursuant to subsection 2 shall consider whether the transactions comply with the standards set forth in subsection 1 and whether they may adversely affect the interests of the policyholders.
- 5. The commissioner must be notified within thirty days of any investment of the domestic insurance company in any one corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.
- ~~2-~~ 6. For purposes of this chapter, in determining whether an insurance company's surplus as regards policyholders is reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:
  - a. The size of the insurance company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
  - b. The extent to which the insurance company's business is diversified among the several lines of insurance.
  - c. The number and size of risks insured in each line of business.

- d. The extent of the geographical dispersion of the insurance company's insured risks.
  - e. The nature and extent of the insurance company's reinsurance program.
  - f. The quality, diversification, and liquidity of the insurance company's investment portfolio.
  - g. The recent past and projected future trend in the size of the insurance company's surplus as regards policyholders investment portfolio.
  - h. The surplus as regards policyholders maintained by other comparable insurance companies.
  - i. The adequacy of the insurance company's reserves.
  - j. The quality and liquidity of investments in subsidiaries made pursuant to section 26.1-10-02. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.
- ~~3-~~ 7. An insurance company subject to registration under section 26.1-10-04 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:
- a. Thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved the payment; or
  - b. The commissioner has approved the payment within the thirty-day period.
- ~~4-~~ 8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, where the fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of:
- a. Ten percent of the insurance company's surplus as regards policyholders as of December thirty-first next preceding; or
  - b. The net gain from operations of the insurance company, if the company is a life insurance company, or the net investment income, if the company is not a life insurance company, for the twelve-month period ending December thirty-first next preceding, but may not include pro rata distributions of any class of the insurance company's own securities.

In determining whether a dividend or distribution is extraordinary, an insurance company other than a life insurance company may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carryforward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains,

less dividends paid in the second and immediate preceding calendar years.

- 5- 9. Notwithstanding any other provision of law, an insurance company may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and the declaration confers no rights upon shareholders until:
- a. The commissioner has approved the payment of the dividend or distribution; or
  - b. The commissioner has not disapproved the payment within the thirty-day period referred to in subsection 3.

SECTION 7. AMENDMENT. Section 26.1-10-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-10. Receivership. Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurance company as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in chapter ~~26-1-07~~ 26.1-06.1 to take possession of the property of the insurance company and to carry on its business.

SECTION 8. Section 26.1-10-10.1 of the North Dakota Century Code is created and enacted as follows:

26.1-10-10.1. Recovery.

1. Subject to other limitations of this section, if an order for liquidation, conservation, or rehabilitation of a domestic insurance company has been entered, and if distribution of payment identified in subdivisions a or b are made at any time during the one year preceding the petition for liquidation, conservation, or rehabilitation, the receiver appointed under the order may recover on behalf of the insurance company:
  - a. From any parent corporation or holding company or person or affiliate who otherwise controlled the insurance company, the amount of distributions other than distributions of shares of the same class of stock, paid by the insurance company on its capital stock; or
  - b. Any payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurance company or its subsidiaries to a director, officer, or employee.
2. A distribution may not be recovered if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable, and that the insurance company did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurance company to fulfill its contractual obligations.

3. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurance company or affiliate at the time the distributions were paid is liable up to the amount of distributions or payments under subsection 1 the person received. Any person who otherwise controlled the insurance company at the time the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
4. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the impaired or insolvent insurance company to pay the contractual obligations of the impaired or insolvent insurance company and to reimburse any guaranty funds.
5. To the extent that any person liable under subsection 3 is insolvent or otherwise fails to pay claims due from it pursuant to subsection 3, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

SECTION 9. AMENDMENT. Section 26.1-10-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-11. Criminal proceedings - Penalty.

1. Any insurance company failing, without just cause, to file any registration statement as required in this chapter shall be required, after notice and hearing, to pay a penalty of one hundred dollars for each day's delay. The commissioner may reduce the penalty if the insurance company demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurance company.
2. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurance company to engage in transactions or make investments which have not been properly reported or submitted pursuant to sections 26.1-10-04 and 26.1-10-05, or which violate this chapter, shall pay, in their individual capacity, a civil penalty of not more than one thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil penalty, the commissioner shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
3. Whenever it appears to the commissioner that any insurance company subject to this chapter or any director, officer, employee, or agent thereof has engaged in any transaction or entered into a contract which is subject to section 26.1-10-05 and which would not have been approved had such approval been requested, the

commissioner may order the insurance company to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurance company to void the contracts and restore the status quo it if is in the best interest of the policyholders, creditors, or the public.

4. Whenever it appears to the commissioner that any insurance company or any director, officer, employee, or agent thereof has committed a willful violation of this chapter, the commissioner may institute criminal proceedings in the district court of the county in which the principal office of the insurance company is located or if the insurance company has no principal office in the state, then in the district court of Burleigh County against the insurance company or the responsible director, officer, employee, or agent of the company. Any insurance company ~~which~~ that willfully violates this chapter is guilty of a class B misdemeanor. Any individual who willfully violates this chapter is guilty of a class A misdemeanor.
5. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his duties under this chapter, may have criminal proceedings instituted against them. Any individual who violates this chapter is guilty of a class A misdemeanor. Any fines imposed shall be paid by the officer, director, or employee in their individual capacity.

SECTION 10. Chapter 26.1-26.2 of the North Dakota Century Code is created and enacted as follows:

26.1-26.2-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
2. "Control" or "controlled" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a contract for goods or nonmanagement services, or otherwise. No person may be deemed to control another person solely by reason of being an officer or director of that person.
  - a. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted upon filing with the commissioner by any person a disclaimer of control of any authorized insurance company. The disclaimer must fully disclose all material relationships and basis for affiliation between the person and the insurance company as well as the basis for disclaiming control. After a disclaimer has been filed, the person is relieved of any duty

- to register or report under this chapter which arises out of the person's relationship with the insurance company unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
- b. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. The commissioner may prospectively revoke or modify the determination after notice and opportunity to be heard, whenever in the commissioner's judgment, revocation or modification is consistent with this chapter.
3. "Independent casualty actuary" means a casualty actuary who is a member of the American academy of actuaries and who is not affiliated with, nor an employee, principal, nor the direct or indirect owner of, or in any way controlled by the insurer or insurance broker.
4. "Licensed property/casualty insurer" or "insurer" means any person, firm, association, or corporation duly licensed to transact a property/casualty insurance business in this state and which issues policies covered by chapter 26.1-42. The following, inter alia, are not licensed property/casualty insurers for the purposes of this chapter:
- a. All nonadmitted insurers;
- b. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986 [Pub. L. No. 99-499, 100 Stat. 1613 (1986)], the Risk Retention Act [15 U.S.C. section 3901 et seq. (1982 & Supp. 1986)], and chapter 26.1-46;
- c. All residual market pools and joint underwriting authorities or associations; and
- d. All captive insurers including insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of member organizations or group members and their affiliates.
5. "Reinsurance intermediary" means any person, firm, association, or corporation who acts as an insurance broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder on behalf of a ceding insurer or acts as an insurance broker in accepting any reinsurance contract or binder on behalf of an assuming insurer.
6. "Violation" means a finding by the commissioner that:

- a. The controlling insurance broker did not materially comply with section 26.1-26.2-02;
- b. The controlled insurer, with respect to business placed by the controlling insurance broker, engaged in a pattern of charging premiums that were lower than those being charged by the insurer or other insurers for similar risks written during the same period and placed by noncontrolling insurance brokers. When determining whether premiums were lower than those prevailing in the market, the commissioner shall take into consideration applicable industry or actuarial standards at the time the business was written;
- c. The controlling insurance broker failed to maintain records, sufficient:
  - (1) To demonstrate that the insurance broker's dealings with its controlled insurer were fair and equitable and in compliance with chapter 26.1-10; and
  - (2) To accurately disclose the nature and details of its transactions with the controlled insurer, including information as is necessary to support the charges or fees to the respective parties;
- d. The controlled insurer, with respect to business placed by the controlling insurance broker, either failed to establish or deviated from its underwriting procedures;
- e. The controlled insurer's capitalization, at the time the business was placed by the controlling insurance broker, was not in compliance with the requirements of this title; or
- f. The controlling insurance broker or the controlled insurer failed to substantially comply with chapter 26.1-10 and any rules relative thereto.

26.1-26.2-02. Limitation on business placed with controlled insurer.

1. No insurance broker which has control of a licensed property/casualty insurer may directly or indirectly place business with that insurer in any transaction in which the insurance broker, at the time the business is placed, is acting as such on behalf of the insured for any compensation, commission, or other thing of value, unless:
  - a. There is a written contract between the controlling insurance broker and the insurer, which contract has been approved by the board of directors of the insurer;
  - b. The insurance broker, prior to the effective date of the policy, delivers written notice to the prospective insured disclosing the relationship between the insurance broker and the controlling insurer and obtains the prospective insured's signature on the disclosure. The signed disclosure must be retained in the underwriting file until the filing of the report on examination covering the period in which the coverage

- is in effect. Except that, if the business is placed through a subinsurance broker who is not a controlling insurance broker, the controlling insurance broker shall retain a signed commitment from the subinsurance broker that the subinsurance broker is aware of the relationship between the insurer and the insurance broker and that the subinsurance broker has or will notify the insured;
- c. All funds collected for the account of the insurer by the controlling insurance broker must be paid, net of commissions, cancellations, and other adjustments, to the insurer no less often than quarterly;
  - d. In addition to any other required loss reserve certification, the controlled insurer shall annually, on March first of each year, file with the commissioner an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year end on business placed by the insurance broker;
  - e. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the insurance broker, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling insurance brokers for placements of the same kinds of insurance; and
  - f. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.
2. No reinsurance intermediary which has control of an assuming insurer may directly or indirectly place business with the insurer in any transaction in which the reinsurance intermediary is acting as a broker on behalf of the ceding insurer. No reinsurance intermediary which has control of a ceding insurer may directly or indirectly accept business from that insurer in any transaction in which the reinsurance intermediary is acting as an insurance broker on behalf of the assuming insurer. The prohibitions in this subsection do not apply to a reinsurance intermediary which makes a full and complete written disclosure to the parties of its relationship with the assuming or ceding insurer prior to completion of the transaction.

26.1-26.2-03. Liability of controlling insurance broker in the event of insolvency of controlled insurer.

If the commissioner has reason to believe that a controlling insurance broker has committed or is committing an act which could be determined to be a violation, and that the violation



substantially contributed to the insolvency of a controlled insurer, the commissioner or receiver may maintain a civil action against the controlling insurance broker for all damages caused by the insurance broker's acts.

26.1-26.2-04. Administrative penalties. In addition to any other remedies provided herein, whenever it appears to the commissioner that a person has committed or is committing an act that could be determined to be a violation, the commissioner may institute a proceeding under chapter 28-32. After the hearing, the commissioner may order one or both of the following:

1. That the person permanently cease and desist from committing the acts found to be in violation of this chapter.
2. Payment of a penalty of not more than ten thousand dollars for each and every act or violation.

This Section does not affect the right of the commissioner to impose any other penalties provided for in title 26.1.

26.1-26.2-05. Third party remedies unaffected.

1. This chapter is not intended to and does not in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.
2. This chapter is not intended to and does not in any manner create a defense to any claim of, or alter or affect the rights of, a receiver, existing in law or otherwise, to maintain a civil action against any person for all damages caused by that person's acts.

SECTION 11. Chapter 26.1-26.3 of the North Dakota Century Code is created and enacted as follows:

26.1-26.3-01. Definitions. As used in this chapter:

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Insurer" means any person, firm, association, or corporation duly licensed in this state as an insurance company pursuant to this title.
3. "Managing general agent" means any individual, partnership, or corporation which:
  - a. Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer including the management of a separate division, department, or underwriting office, and acts as an agent for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual

statement of the insurer in any one quarter or year, and who either:

- (1) Adjusts or pays claims in excess of an amount determined by the commissioner; or
- (2) Negotiates reinsurance on behalf of the insurer.

b. Notwithstanding the above, the following persons will not be considered as managing general agents for the purposes of this chapter:

- (1) An employee of the insurer.
- (2) A United States manager of the United States branch of an alien insurer.
- (3) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

4. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

#### 26.1-26.3-02. Licensure.

1. No individual, partnership, or corporation may act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the individual, partnership, or corporation is licensed as an insurance agent in this state.
2. An individual, partnership, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the individual, partnership, or corporation is licensed as either a resident or nonresident insurance agent in this state pursuant to the provisions of this title.
3. The commissioner may require a bond in an amount acceptable to him for the protection of the insurer.
4. The commissioner may require the managing general agent to maintain an adequate errors and omissions policy.

26.1-26.3-03. Required contract provisions. No individual, partnership, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function,

specifies the division of the responsibilities, and which contains the following minimum provisions:

1. The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.
2. The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.
3. All funds collected for the account of an insurer will be held by the managing general agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.
4. Separate records of business written by the managing general agent will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner.
5. The contract may not be assigned in whole or in part by the managing general agent.
6. Appropriate underwriting guidelines including:
  - a. The maximum annual premium volume;
  - b. The basis of the rates to be charges;
  - c. The types of risks which may be written;
  - d. Maximum limits of liability;
  - e. Applicable exclusions;
  - f. Territorial limitations;
  - g. Policy cancellation provisions; and
  - h. The maximum policy period.
7. If the contract permits the managing general agent to settle claims on behalf of the insurer:
  - a. All claims must be reported to the company in a timely manner.
  - b. A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

- (1) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;
    - (2) Involves a coverage dispute;
    - (3) May exceed the managing general agent's claims settlement authority;
    - (4) Is open for more than six months; or
    - (5) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.
  - c. All claims files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.
  - d. Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
8. Where electronic claims files are in existence, the contract must address the timely transmission of the data.
9. If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section 26.1-26.3-04.
10. The managing general agent may not:
- a. Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages, and amounts or percentages that may be reinsured and commission schedules.
  - b. Commit the insurer to participate in insurance or reinsurance syndicates.

- c. Appoint any agent without assuring that the agent is licensed in the appropriate lines of insurance.
- d. Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed one percent of the insurer's policyholder's surplus as of December thirty-first of the last completed calendar year.
- e. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.
- f. Permit its subagent to serve on the insurer's board of directors.
- g. Jointly employ an individual who is employed with the insurer.
- h. Appoint a submanaging general agent.

26.1-26.3-04. Duties of insurers.

1. The insurer must have on file, in a form acceptable to the commissioner, an independent financial examination of each managing general agent with which it has done business.
2. If a managing general agent establishes loss reserves, the insurer must annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.
3. The insurer must periodically and at least semiannually conduct an onsite review of the underwriting and claims processing operations of the managing general agent.
4. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.
5. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer must provide written notification of the appointment or termination to the commissioner. Notices of appointment of a managing general agent must include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.
6. An insurer shall review its books and records each quarter to determine if any of its agents have become, by operation of subsection 3 of section 26.1-26.3-01, a managing general agent as defined in that section. If the insurer determines that an agent has become a managing general agent pursuant to the above, the

insurer shall promptly notify the agent and the commissioner of the determination and the insurer and agent must fully comply with the provisions of this Act within thirty days.

7. An insurer may not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by chapter 26.1-10.

26.1-26.3-05. Examination authority. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

26.1-26.3-06. Penalties and liabilities.

1. If the commissioner finds after a hearing conducted in accordance with chapter 28-32 that any person has violated any provision of this chapter, the commissioner may order:
  - a. For each separate violation, a penalty in an amount of one thousand dollars;
  - b. Revocation or suspension of the agent's license; and
  - c. The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.
2. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
3. Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

26.1-26.3-07. Rulemaking authority. The commissioner of insurance may adopt reasonable rules for the implementation and administration of the provisions of this chapter.

SECTION 12. Chapter 26.1-31.1 of the North Dakota Century Code is created and enacted as follows:

26.1-31.1-01. Definitions. As used in this chapter:

1. "Actuary" means a person who is a member in good standing of the American academy of actuaries.
2. "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.
3. "Insurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of the insurance law as an insurer.

4. "Licensed producer" means an agent, broker, or reinsurance intermediary licensed pursuant to the applicable provision of this title.
5. "Qualified United States financial institution" means an institution that:
  - a. Is organized or in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;
  - b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
  - c. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
6. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections 7 and 8 of this section.
7. "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.
8. "Reinsurance intermediary-manager" means any person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding this definition, the following persons shall not be considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this chapter:
  - a. An employee of the reinsurer.
  - b. A United States manager of the United States branch of an alien reinsurer.
  - c. An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer and be subject to chapter 26.1-10, and whose compensation is not based on the volume of premiums written.
  - d. The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance

commissioner of the state in which the manager's principal business office is located.

9. "Reinsurer" means any person, firm, association, or corporation duly licensed in this state pursuant to the applicable provisions of this title as an insurer with the authority to assume reinsurance.

10. "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this chapter.

26.1-31.1-02. Licensure.

1. No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

a. In this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

b. In another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

2. No person, firm, association, or corporation shall act as a reinsurance intermediary-manager:

a. For a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

b. In this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state.

c. In another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or the person is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to:

a. File a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.



4. a. The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements thereto.
- b. If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the changes shall not become effective until acknowledged by the commissioner.
5. The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of such license. Upon written request therefor, the commissioner will furnish a summary of the basis for refusal to issue a license.

26.1-31.1-03. Required contract provisions - Reinsurance intermediary-brokers. Transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity shall only be entered into, pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, contain provisions that:

1. The insurer may terminate the reinsurance intermediary-broker's authority at any time.
2. The reinsurance intermediary-broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within thirty days of receipt.

3. All funds collected for the insurer's account will be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined by this chapter.
4. The reinsurance intermediary-broker will comply with section 26.1-31.1-04 of this chapter.
5. The reinsurance intermediary-broker will comply with the written standards established by the insurer for the cessions or retrocession of all risks.
6. The reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

26.1-31.1-04. Books and records - Reinsurance intermediary-brokers.

1. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker will keep a complete record for each transaction showing:
  - a. The type of contract, limits, underwriting restrictions, classes or risks and territory;
  - b. Period of coverage, including the effective date and the expiration date, cancellation provisions and notice required of cancellation;
  - c. Reporting and settlement requirements of balances;
  - d. Rate used to compute the reinsurance premium;
  - e. Names and addresses of assuming reinsurers;
  - f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
  - g. Related correspondence and memoranda;
  - h. Proof of placement;
  - i. Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;
  - j. Financial records, including but not limited to, premium and loss accounts; and
  - k. When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:
    - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk;  
or

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

2. The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

26.1-31.1-05. Duties of insurers utilizing the services of reinsurance intermediary-broker.

1. An insurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person, firm, association, or corporation is licensed as required by subsection 1 of section 26.1-31.1-02.

2. An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to chapter 26.1-10.

3. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

26.1-31.1-06. Required contract provisions - Reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract, approved by the reinsurer's board of directors, which specifies the responsibilities of each party. At least thirty days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, contain provisions that:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined by this chapter. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager

- shall maintain a separate bank account for each reinsurer that it represents.
4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager will keep a complete record for each transaction showing:
    - a. The type of contract, limits, underwriting restrictions, classes or risks, and territory;
    - b. Period of coverage, including the effective date and the expiration date, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
    - c. Reporting and settlement requirements of balances;
    - d. Rate used to compute the reinsurance premium;
    - e. Names and addresses of reinsurers;
    - f. Rate of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
    - g. Related correspondence and memoranda;
    - h. Proof of placement;
    - i. Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by subsection 4 of section 26.1-31.1-08, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
    - j. Financial records, including but not limited to, premium and loss accounts; and
    - k. When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
      - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
      - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
  5. The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.
  6. The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

7. The reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.
8. Set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.
9. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:
  - a. All claims will be reported to the reinsurer in a timely manner.
  - b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
    - (1) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
    - (2) Involves a coverage dispute;
    - (3) May exceed the reinsurance intermediary-manager's claims settlement authority;
    - (4) Is open for more than six months; or
    - (5) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.
  - c. All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.
  - d. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
10. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection 3 of section 26.1-31.1-08.
11. The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.

12. The reinsurer shall periodically and at least semiannually conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.
13. The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.
14. The acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

26.1-31.1-07. Prohibited acts. The reinsurance intermediary-manager shall not:

1. Bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.
2. Commit the reinsurer to participate in reinsurance syndicates.
3. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed.
4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December thirty-first of the last complete calendar year.
5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.
6. Jointly employ an individual who is employed by the reinsurer.
7. Appoint a subreinsurance intermediary-manager.

26.1-31.1-08. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.

1. A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless such person, firm, association, or corporation is licensed as required by subsection 2 of section 26.1-31.1-02 of this chapter.
2. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, prepared by an independent certified public accountant, in a form acceptable to the commissioner.

3. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.
4. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.
5. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of its termination to the commissioner.
6. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by chapter 26.1-10.

26.1-31.1-09. Examination authority.

1. A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.
2. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

26.1-31.1-10. Penalties and liabilities.

1. A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing, to be in violation of any provision of this chapter, shall:
  - a. For each separate violation, pay a penalty in an amount not exceeding five thousand dollars;
  - b. Be subject to revocation or suspension of its license; and
  - c. If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.
2. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided in the insurance law.
3. Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights to such persons.

26.1-31.1-11. Rules. The commissioner may adopt reasonable rules for the implementation and administration of the provisions of this chapter.

26.1-31.1-12. Effective date. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary after the effective date of this chapter unless utilization is in compliance with this chapter.

SECTION 13. Chapter 26.1-31.2 of the North Dakota Century Code is created and enacted as follows:

26.1-31.2-01. Credit allowed a domestic ceding insurer. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of either subsection 1, 2, 3, 4, or 5. If meeting the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.
2. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:
  - a. Files with the commissioner evidence of its submission to this state's jurisdiction;
  - b. Submits to this state's authority to examine its books and records;
  - c. Is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and
  - d. Files each year by March first with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either
    - (1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or
    - (2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

3. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered



through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

- a. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
- b. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of subdivision a of subsection 3 does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of a valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.
- b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which is under the supervision of the department of trade and industry of the United Kingdom and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten million dollars; the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trustee surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the commissioner an annual certification of the member's

solvency by the member's domiciliary regulator and its independent public accountant.

- c. The trust must be established in a form approved by the commissioner of insurance. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.
- d. No later than March first of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.
5. Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4 but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
6. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 of section 26.1-31.2-01 shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- a. In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and
  - b. To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

26.1-31.2-02. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 shall be allowed in an amount not

exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03. This security may be in the form of:

1. Cash.
2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets under this state's investment statutes.
3. Clean, irrevocable, and unconditional letters of credit, as defined in subsection 1 of section 26.1-31.2-03, issued or confirmed by a qualified United States institution no later than December thirty-first in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

4. Any other form of security acceptable to the commissioner.

26.1-31.2-03. Qualified United States financial institutions.

1. For purposes of subsection 3 of section 26.1-31.2-02, a "qualified United States financial institution" means an institution that:
  - a. Is organized, or in case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;
  - b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;
  - c. Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.
2. A "qualified United States financial institution" means, for purposes of those provisions of this chapter specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

- a. Is organized, or in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- b. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

26.1-31.2-04. Rulemaking authority. The commissioner may adopt reasonable rules for the implementation and administration of this chapter.

26.1-31.2-05. Reinsurance agreements affected. Sections 26.1-31.2-01, 26.1-31.2-02, 26.1-31.2-03, and 26.1-31.2-04 of this chapter apply to all cessions after the effective date of this chapter under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six months after the effective date of this chapter.

SECTION 14. REPEAL. Sections 26.1-07-08, 26.1-07-09, 26.1-07-10, 26.1-07-11, 26.1-07-12, 26.1-07-13, 26.1-07-14, 26.1-07-15, 26.1-07-16, 26.1-07-17, 26.1-07-18, 26.1-07-19, and 26.1-07-20 of the North Dakota Century Code are repealed.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 306

HOUSE BILL NO. 1441  
(Representatives Skjerven, R. Berg)  
(Senator Thane)

### COUNTY MUTUAL INSURANCE COMPANIES

AN ACT to amend and reenact sections 26.1-13-01, 26.1-13-02, and 26.1-13-15 of the North Dakota Century Code, relating to organization and territorial limits of a county mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-01. County mutual insurance company - Organization. A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than ~~fifteen~~ twenty counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure.

SECTION 2. AMENDMENT. Section 26.1-13-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required. Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner and to the attorney general the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.

2. The name of the city in or near which the business office of the company is to be located.
3. The intended duration of the company, which is perpetual.

SECTION 3. AMENDMENT. Section 26.1-13-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-15. Territorial limits of county mutual company's operations - Terms of policies - Property insurable. A county mutual insurance company may not insure any property beyond ~~the limits of the~~ its authorized territory ~~comprised in the formation of the company~~ of operation except as provided in subsection 3 of section 26.1-13-12 and except that this territorial limitation does not apply to reinsurance contracts. A policy may not be issued to exceed five years. A policy may not be issued covering property located within the platted limits of any incorporated city in this state unless:

1. The policy issued provides coverage on the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof as specified in sections 26.1-13-14 and 26.1-13-16 to existing members within the platted limits of any incorporated city in this state; or
2. The policy issued provides coverage specified in sections 26.1-13-14 and 26.1-13-16 on property located within the platted limits of any incorporated city with a population of less than ~~two~~ ~~ten~~ thousand ~~five hundred~~ located within the territory comprised in the formation of the company.

The company may insure all property located outside of incorporated cities within the limits of the territory comprised in the formation of the company. Policies issued on property located within the platted limits of any incorporated city may only cover the actual place of residence occupied by the policyholder and appurtenant structures and the contents thereof and must conform to rules adopted by the commissioner establishing requirements for underwriting risks and safeguarding financial solvency.

A policy issued by the company, if it so provides, may cover loss or damage to livestock, personal property, vehicles, and farm machinery while temporarily removed from the premises of the insured to other locations.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 307

SENATE BILL NO. 2375  
(Senators Wogsland, Schoenwald, Keller)  
(Representatives Laughlin, Williams, Stofferahn)

### NONPROFIT HEALTH SERVICE CORPORATION DIRECTORS

AN ACT to amend and reenact section 26.1-17-04 of the North Dakota Century Code, relating to the board of directors for nonprofit health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-04. Directors - Responsibilities. A board of directors shall manage the business and affairs of a health service corporation. The board is to consist of at least nine members. At least a majority of the directors of a health service corporation writing hospital or medical service contracts under this chapter must be at all times subscribers.

A subscriber director is a director who is a subscriber and who is not a provider of health care, a person who has a material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution that provides health care services, or a spouse or a member of the immediate family of such a person. Nominations for the replacement of subscriber directors must be made by the existing subscriber directors.

A director may serve on the board of only one corporation subject to this chapter at a time.

Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter must be considered when making nominations for the board of directors of a corporation subject to this chapter.

A health service corporation may not reimburse or compensate a director for more than necessary and actual expenses for service as a member of the board of directors.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 308

HOUSE BILL NO. 1424  
(Larson)

### HEALTH SERVICE CORPORATION PRACTITIONER CONTRACTS

AN ACT to amend and reenact section 26.1-17-12 of the North Dakota Century Code, relating to contract limitations of a health service corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-12. Contract limitations. Every Except as provided in this section, every physician, oral surgeon, dentist, or practitioner licensed and registered in the state of North Dakota has the right to contract with any health service corporation for furnishing general or special medical care, dental care, or optometric care, as the case may be, but the governing board of a corporation may refuse to contract or may terminate a contract if the board determines that a physician, oral surgeon, dentist, or practitioner is providing inappropriate or substandard care to the corporation's subscribers. A corporation may not impose any restriction as to the methods of diagnosis or treatment. The private relationship of physician and patient, dentist and patient, or practitioner and patient is to be maintained at all times and the subscriber has the right of free choice in selecting any physician, oral surgeon, dentist, or practitioner.

A health service corporation may, in its discretion, by its articles of incorporation, articles of association, or bylaws, and in its contract with its subscribers, limit the benefits that the corporation will furnish, and may provide for a division of benefits it agrees to furnish into classes or kinds. In the absence of any limitation or division of services, a corporation may provide both general and special medical and surgical, dental, or optometric care benefits, including such service as may necessarily be incident to such care. A corporation may, in its discretion, limit the issuance of contracts as specified in its bylaws.

A dental or optometric service contract by a health service corporation may not provide the payment of any cash indemnification by the corporation to the subscriber or the subscriber's estate on account of death, illness, or other injury.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 309

HOUSE BILL NO. 1425  
(Wentz)

### DENTAL AND OPTOMETRIC SERVICE CONTRACTS

AN ACT to amend and reenact section 26.1-17-21 of the North Dakota Century Code, relating to limitations on dental and optometric service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-17-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-21. Limitations on dental and optometric service contracts. Every subscriber under a dental or optometric service plan must receive a copy of the contract. The contract must clearly state the care, appliances, materials, and supplies to be provided under the contract and the rate charged the subscriber. Every subscriber must have, at all times, free choice of the dentist or practitioner who is to treat the subscriber, and this right must be prominently printed in the contract. Every optometric service contract must provide that a subscriber has the freedom of choice to have the materials and supplies furnished by any practitioner or optician, the cost for which is to be covered in accordance with the terms of the contract. ~~A health service corporation may not enter into any contract, agreement, or understanding, directly or indirectly, with any dentist or practitioner whereby the dentist or practitioner is to render any services to any subscriber, but all such services must be a matter of agreement directly between the patient and the dentist or practitioner selected by the patient to treat the patient.~~

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 310

HOUSE BILL NO. 1220  
 (Committee on Human Services and Veterans Affairs)  
 (At the request of the State Department of Health and  
 Consolidated Laboratories)

### HEALTH MAINTENANCE ORGANIZATIONS

AN ACT to amend and reenact subsections 14 and 16 of section 26.1-18-03, sections 26.1-18-06, 26.1-18-17, 26.1-18-18, 26.1-18-27, 26.1-18-28, and 26.1-18-30 of the North Dakota Century Code, relating to the role of the department of health and consolidated laboratories in the review and issuance of certificates of authority for health maintenance organizations' complaint systems, annual reports, examinations, suspensions or revocations, and administrative procedures; and to repeal sections 26.1-18-05 and 26.1-18-33 of the North Dakota Century Code, relating to applications for certificate of authority for health maintenance organizations and the department of health and consolidated laboratories' authority to contract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 14 and 16 of section 26.1-18-03 of the North Dakota Century Code are amended and reenacted as follows:

14. A description of the procedures and programs to be implemented to meet the quality of health care requirements in subsection 7 of section ~~26.1-18-05~~ 26.1-18-06.
16. Any other information the commissioner requires to make the determinations required under sections ~~26.1-18-05~~ and section 26.1-18-06.

SECTION 2. AMENDMENT. Section 26.1-18-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18-06. Review of application by commissioner - Issuance of certificate of authority. The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 26.1-18-03 within ninety days following receipt of the certification from the state department of health and consolidated laboratories given pursuant to section ~~26.1-18-05~~ application. The certificate of authority must be issued upon payment of the application fee prescribed if the commissioner is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are honest, competent, and trustworthy.
2. The state department of health and consolidated laboratories certifies, in accordance with section ~~26.1-18-05~~, that the health maintenance organization's proposed plan of operation meets the

requirements of that section health maintenance organization has demonstrated the willingness and potential ability to assure that the health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility, and continuity of service.

3. The health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments.
4. The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:
  - a. The financial soundness of the health care plan's arrangements for health care services.
  - b. A schedule of premium rates with supporting actuarial and other data.
  - c. The adequacy of working capital.
  - d. Any agreement with an insurer, a health service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan.
  - e. Any agreement with providers for the provision of health care services. This subsection does not apply to agreements between individual providers, groups of providers, individual providers and groups of providers, or between other persons who are not applicants.
  - f. Any surety bond or deposit of cash or securities submitted in accordance with section 26.1-18-23 as a guarantee that the obligations will be duly performed.
5. The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section 26.1-18-08.
6. Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 26.1-18-03 or by independent investigation, is contrary to the public interest.
7. Any deficiencies certified by the state department of health and consolidated laboratories have been corrected. The health maintenance organization has established arrangements, in accordance with rules adopted by the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcomes.

8. The health maintenance organization has established a procedure, in accordance with rules adopted by the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and any other matters reasonably required by the commissioner.

Denial of a certificate of authority is effective only after compliance with the requirements of section 26.1-18-30.

SECTION 3. AMENDMENT. Section 26.1-18-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18-17. Complaint system - Approval of commissioner - Annual report - Contents - Examinations.

1. A health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner, ~~after consultation with the state department of health and consolidated laboratories,~~ to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.
2. A health maintenance organization shall submit to the commissioner ~~and the state department of health and consolidated laboratories~~ an annual report in a form prescribed by the commissioner, ~~after consultation with the state department of health and consolidated laboratories,~~ which must include:
  - a. A description of the procedures of the complaint system.
  - b. The total number of complaints handled through the complaint system and a compilation of causes underlying the complaints filed.
  - c. The number, amount, and disposition of malpractice claims during the year filed by enrollees of the health maintenance organization against the health maintenance organization and any of the providers used by it.
3. A health maintenance organization shall maintain records of written complaints filed with it concerning other than health care services and shall submit to the commissioner a summary report at the times and in the format required by the commissioner. The complaints involving other persons must be referred to the persons with a copy to the commissioner.
4. The commissioner ~~or the state department of health and consolidated laboratories,~~ ~~or both,~~ may examine the complaint system.

SECTION 4. AMENDMENT. Section 26.1-18-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18-18. Annual report - Form prescribed by commissioner. Every health maintenance organization shall annually, on or before March first, file a report, verified by at least two principal officers, with the commissioner ~~with a copy to the state department of health and consolidated~~

**laboratories** covering the preceding calendar year. The report must be on forms prescribed by the commissioner and must include:

1. A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent public accountant.
2. Any material changes in the information submitted pursuant to section 26.1-18-03.
3. The number of persons enrolled during the year, the number of enrollees terminated during the year, and the number of enrollees as of the end of the year.
4. A summary of information compiled pursuant to subsection 8 of section 26.1-18-05 26.1-18-06 in the form required by the state department of health and consolidated laboratories commissioner.
5. Any other information relating to the performance of the health maintenance organization necessary to enable the commissioner to carry out the commissioner's duties under this chapter.

SECTION 5. AMENDMENT. Section 26.1-18-27 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18-27. Examinations by commissioner and state department of health and consolidated laboratories - Expenses - Acceptance of other examinations. The commissioner may examine the affairs of any health maintenance organization as often as necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

The state department of health and consolidated laboratories may make an examination concerning the quality of health care services of any health maintenance organization as often as necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

For the purpose of examinations, the commissioner and the state department of health and consolidated laboratories may administer oaths to, and examine, the officers and agents of the health maintenance organization and the principals of providers with whom the organization has contracts, agreements, or other arrangements pursuant to its health care plan. To the extent that examinations may require the disclosure of personally identifying information relating to either financial transactions or medical information concerning a plan enrollee in the records of the health maintenance organization or the records of a provider with whom the organization has contracts, agreements, or other arrangements pursuant to its health care plan, the information ~~is to~~ must be used for the sole purpose of assessing the quality of care provided and the degree of compliance with provisions of this chapter. The information ~~is to~~ must be held in confidence and may not be disclosed except upon the express consent of the enrollee, or pursuant to a court order for the production or discovery of evidence, or in the event of a claim or litigation between the enrollee and the health maintenance organization when the information is pertinent.

The expenses of examinations under this section must be assessed against the organization being examined and remitted to the commissioner or the state department of health and consolidated laboratories for whom the examination is being conducted.

The commissioner or the state department of health and consolidated laboratories may accept an examination or the report of an examination made by the commissioner or the state department of health of another state, the federal government, or an approved independent accrediting organization.

**SECTION 6. AMENDMENT.** Section 26.1-18-28 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-18-28.** Suspension or revocation of certificate of authority - Grounds - Procedure - Duty of organization. The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if the commissioner finds that any of the following exist:

1. The health maintenance organization is operating significantly in contravention of its basic organizational document, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under sections 26.1-18-02, 26.1-18-03, and 26.1-18-04, unless amendments to the submissions have been filed with and approved by the commissioner.
2. The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of sections 26.1-18-12 and 26.1-18-14.
3. The health care plan does not provide or arrange for basic health care services or the health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its health care plan.
4. The state department of health and consolidated laboratories certifies to the commissioner that:
  - a. The health maintenance organization does not meet the requirements of subsection 8 of section ~~26.1-18-05~~; or
  - b. The health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its health care plan 26.1-18-06.
5. The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.
6. The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section 26.1-18-08.
7. The health maintenance organization has failed to implement the complaint system required by section 26.1-18-17 in a manner to reasonably resolve valid complaints.

8. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.
9. The continued operation of the health maintenance organization would be hazardous to its enrollees.
10. The health maintenance organization has otherwise failed to substantially comply with this chapter.

A certificate of authority may be suspended or revoked only after compliance with the requirements of section 26.1-18-30.

When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization may not, during the period of suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and may not engage in any advertising or solicitation.

When the certificate of authority of a health maintenance organization is revoked, the organization must proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and may conduct no further business except as may be essential to the orderly conclusion of the affairs of ~~such the~~ organization. It may not engage in any further advertising or solicitation ~~whatsoever~~. The commissioner may, by written order, permit any further operation of the organization as the commissioner finds to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

SECTION 7. AMENDMENT. Section 26.1-18-30 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18-30. Administrative procedures. When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, the commissioner shall notify the health maintenance organization and the state department of health and consolidated laboratories in writing specifically stating the grounds for denial, suspension, or revocation and fixing a time for a hearing on the matter as provided in chapter 28-32.

~~The state department of health and consolidated laboratories, or its designated representative, must be in attendance at the hearing and shall participate in the proceedings. The recommendation and findings of the department with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority, are conclusive and binding upon the commissioner. After the hearing, or upon the failure of the health maintenance organization to appear at the hearing, the commissioner shall take action as is deemed advisable on written findings which must be mailed to the health maintenance organization with a copy to the state department of health and consolidated laboratories.~~

SECTION 8. REPEAL. Sections 26.1-18-05 and 26.1-18-33 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 311

HOUSE BILL NO. 1217  
(Committee on Industry, Business and Labor)  
(At the request of the Commissioner of Insurance)

### FIRE AND TORNADO AND BONDING FUND

AN ACT to amend and reenact sections 26.1-21-09.1, 26.1-22-06, 26.1-22-13, and 26.1-22-17 of the North Dakota Century Code, relating to the fire and tornado fund and the state bonding fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-21-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or stamps - Premiums - Determination of eligibility. The annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars. The premium must be paid to the state treasurer fund pursuant to rules adopted by the commissioner. The commissioner shall deposit the premiums with the state treasurer to the credit of the fund. The commissioner may reduce or waive the premium if it is determined that funds received pursuant to this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner shall determine the conditions and qualifications of agents bonded under this section. The amount of coverage afforded under this section is limited to five thousand dollars per agent per year.

\* SECTION 2. AMENDMENT. Section 26.1-22-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values for property. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law. Notwithstanding any other provision of this chapter, the expenses for necessary rating inspections for the purpose of determining the proper premium rate to be applied to the property insured by the fund must be paid out of the fund.

SECTION 3. AMENDMENT. Section 26.1-22-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-13. Reserve balance - Payment of loss. All assessments, interest, and profits on investments and all other income of the fund must be added to a reserve balance within the fund. All losses incurred including loss adjustment expenses and operating expenses appropriated by the

\* NOTE: Section 26.1-22-06 was also amended by section 4 of House Bill No. 1029, chapter 313.



legislative assembly must be paid from the reserve balance in the manner provided by law.

\* SECTION 4. AMENDMENT. Section 26.1-22-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-17. Loss - How paid. All losses occasioned by the hazards provided for by this chapter must be paid out of the fund in an amount not exceeding the amount of the insurance upon any particular risk. The loss upon any building or property insured in the fund, whether totally destroyed or partially damaged by reason of the hazards, must be adjusted by the commissioner or a duly authorized adjuster or adjusting company. All necessary loss adjustment expenses must be included as a component of the loss and be paid out of the fund. Immediately upon the happening or occasion of any such loss or damage, the officer, board, or agency having charge or control of the property destroyed or damaged shall notify the commissioner by telegram or in writing, giving the description of the property, the amount of insurance carried, the probable amount of loss or damage, and the probable cause of loss or damage. The officer, board, or agency having control of the damaged property may not disturb the property except as provided in the policy until the commissioner or the commissioner's agent has adjusted the loss or has given notice that the information on which the adjustment is to be made has been secured. Allowances for loss and damage to insured property must be paid out of the fund upon warrants drawn by the office of management and budget upon the state treasurer against the fund after the submission of a voucher prepared by the commissioner to the office of management and budget specifying the amount to be paid and the payee to whom the warrants must be drawn. However, if at any time due to a catastrophe or disaster, or a succession of catastrophes or disasters, the reserve balance has been depleted below two million dollars, the commissioner may, with the approval of the industrial commission, issue premium anticipation certificates in an amount sufficient to bring the reserve balance up to two million dollars. The premium anticipation certificates must be issued for a period of from ten to twenty years, as determined by the commissioner with the approval of the industrial commission, and the interest and principal must be paid and retired by assessments levied on all policies in force with the fund. To retire these premium anticipation certificates, the commissioner shall levy a special assessment against all property insured in the fund; however, the total of all assessments and premiums provided for in section 26.1-22-14 may not exceed the full ~~bureau~~ rate as developed by an advisory organization at the direction of the commissioner. Any state department may invest its funds in the purchase of the premium anticipation certificates.

Approved March 25, 1991  
Filed March 26, 1991

\* NOTE: Section 26.1-22-17 was also amended by section 7 of House Bill No. 1029, chapter 313.

## CHAPTER 312

HOUSE BILL NO. 1028  
 (Legislative Council)  
 (Interim Budget Committee on Government Administration)

### STATE BUILDING INSURANCE LEVELS

AN ACT to create and enact two new sections to chapter 26.1-22 of the North Dakota Century Code, relating to insuring state-owned property through the state fire and tornado fund; to amend and reenact section 26.1-22-01 of the North Dakota Century Code, relating to definitions; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 26.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Fund" means the state fire and tornado fund.
2. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.
3. "Permanent contents" refers only to such public property, either owned or leased, usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. ~~Permanent contents~~ The term includes similar property owned by an international peace garden or a winter show. ~~Permanent contents~~ The term does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.
4. "Political subdivision" includes a county, city, township, school district, or park district of this state.
5. "Replacement cost" is the cost to replace a building or its permanent contents with a similar structure of like materials or a similar product at current prices.

\* NOTE: Section 26.1-22-01 was also amended by section 1 of House Bill No. 1029, chapter 313.

6. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 2. Two new sections to chapter 26.1-22 of the North Dakota Century Code are created and enacted as follows:

State-owned property - Insured at replacement cost. State-owned buildings constructed after 1939 and fixtures and permanent contents insured under this chapter must be insured at replacement cost or for another value in accordance with underwriting guidelines adopted by the commissioner.

Replacement cost appraisal required on state-owned property. Once every six years each state agency and institution shall obtain from the fund a replacement cost appraisal on all buildings and fixtures and permanent contents under its control. The fund shall determine the manner of conducting the appraisal. Annually, except for any year an appraisal is conducted, the agency or institution shall adjust the appraisal amount in the manner authorized by the fund.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the state fire and tornado fund in the state treasury, not otherwise appropriated, the sum of \$99,688, or so much thereof as may be necessary, to the commissioner of insurance for the purpose of implementing this Act for the biennium beginning on July 1, 1991, and ending on June 30, 1993.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 313

HOUSE BILL NO. 1029  
 (Legislative Council)  
 (Interim Budget Committee on Government Administration)

### FIRE AND TORNADO FUND COVERAGE

AN ACT to create and enact a new section to chapter 26.1-22 of the North Dakota Century Code, relating to indirect loss insurance by the state fire and tornado fund; and to amend and reenact sections 26.1-22-01, 26.1-22-02, 26.1-22-06, 26.1-22-14, 26.1-22-15, 26.1-22-17, and 26.1-22-18 of the North Dakota Century Code, relating to the state fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 26.1-22-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Fund" means the state fire and tornado fund.
2. "Indirect loss" means a loss in income or the additional expenses incurred because of a property loss.
3. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.
- ~~3.~~ 4. "Permanent contents" refers only to such public property, either owned or leased, usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. Permanent contents includes similar property owned by an international peace garden or a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.
- ~~4.~~ 5. "Political subdivision" includes a county, city, township, school district, or park district of this state.

\* NOTE: Section 26.1-22-01 was also amended by section 1 of House Bill No. 1028, chapter 312.

- 5- 6. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 2. AMENDMENT. Section 26.1-22-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-02. State fire and tornado fund under management of commissioner - Purpose of fund. The commissioner shall manage the fund. The fund must be maintained as a fund to insure the various state industries, the various political subdivisions, any international peace garden, and any winter show against loss to the public buildings, or buildings owned by an international peace garden or a winter show, and fixtures and permanent contents therein, and against indirect loss, through fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, and vehicles, and at. At the option of the insured, the fund has the authority to may insure against any other risks of direct physical loss and indirect loss from those risks. All moneys collected under this chapter must be paid into the fund for use only for the purposes provided for in this chapter.

SECTION 3. A new section to chapter 26.1-22 of the North Dakota Century Code is created and enacted as follows:

Insurance against indirect losses. The commissioner shall provide, upon request of an entity insured with the fund, coverage by the fund for an indirect loss incurred because of a loss arising out of a peril insured against by the fund.

\* SECTION 4. AMENDMENT. Section 26.1-22-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values ~~for property~~. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law. The commissioner shall adopt guidelines in determining insurable values to assist state agencies and institutions and political subdivisions in determining whether to select indirect loss coverage.

SECTION 5. AMENDMENT. Section 26.1-22-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-14. Assessments and reporting of premiums and losses. If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars and the. The commissioner shall then levy an assessment against every policy in force with the fund on all public property or property belonging to an international peace garden or a winter show. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property to for which the eighty percent or ninety percent coinsurance that rate may be applicable, and the full rate established for policies providing coverage against indirect losses and for properties to which the eighty

- \* NOTE: Section 26.1-22-06 was also amended by section 2 of House Bill No. 1217, chapter 311.

percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance ~~shall set~~ sets the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance reaches twelve million dollars, the assessment must be in an amount determined by the commissioner but ~~in no event in excess of~~ may not exceed sixty percent of the rates set by the insurance services office for insured property unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent must be used in such computation.

The commissioner shall submit not later than December thirty-first of each odd-numbered year, all data concerning premiums written and losses incurred during the previous biennium ending July thirty-first to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

SECTION 6. AMENDMENT. Section 26.1-22-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-15. Collection of premiums and assessments. The commissioner, as soon as possible after providing for ~~the insurance of coverage against any indirect loss or loss of property belonging to the state, a political subdivision, an international peace garden, or a winter show,~~ the amount of premium or assessment due from the state, state industry, political subdivision, an international peace garden, or a winter show. shall certify to the ~~board or officer in charge of the property insured~~ board or officer in charge of the property insured the amount of premium or assessment due from the state, state industry, political subdivision, an international peace garden, or a winter show. The certificate must give the name, ~~location, and description of the property insured,~~ location, and description of the property insured, the amount of insurance written thereon, and the amount of the premium or assessment, ~~and if applicable, the location and description of the insured property.~~ and if applicable, the location and description of the insured property. The proper officer shall remit to the commissioner the amount of the premium or assessment within sixty days after the date of the certification. The commissioner shall deposit the premiums and assessments with the state treasurer to the credit of the fund. If the premiums or assessments are not paid within sixty days after the date on which they are certified, they shall bear interest at the rate of six percent per annum and collection thereof may be enforced by appropriate action. The attorney general and the state's attorney of the ~~several counties~~ relevant county shall bring appropriate actions to enforce the collections of the premium and assessment upon request of the commissioner. Payment of the premiums or assessments certified pursuant to this section may be made by any state department, officer, board, institution, or agency and by any political subdivision, out of any available funds, notwithstanding that no specific appropriation or tax levy has been made therefor.

\* SECTION 7. AMENDMENT. Section 26.1-22-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-17. Loss - How paid. All losses occasioned by the ~~hazards provided for by perils insured against~~ perils insured against under this chapter must be paid out of the fund in an amount not exceeding the amount of the insurance upon any particular risk. The loss upon any building or property insured in the fund,

\* NOTE: Section 26.1-22-17 was also amended by section 4 of House Bill No. 1217, chapter 311.

whether totally destroyed or partially damaged by reason of the hazards perils, must be adjusted by the commissioner or a duly authorized adjuster or adjusting company. Immediately upon the happening or occasion of any such loss or damage, the officer, board, or agency having charge or control of the property destroyed or damaged insured shall notify the commissioner by telegram or in writing, giving the. The notification must be in the manner required by the commissioner and must provide a description of the property, the amount of insurance carried, the probable amount of loss or damage, and the probable cause of loss or damage. The officer, board, or agency having control of the damaged property insured may not disturb the property except as provided in the policy until the commissioner or the commissioner's agent has adjusted the loss or has given notice that the information on which the adjustment is to be made has been secured. Allowances for loss and damage to insured property must be paid out of the fund upon warrants drawn by the office of management and budget upon the state treasurer against the fund after the submission of a voucher prepared by the commissioner to the office of management and budget specifying the amount to be paid and the payee to whom the warrants must be drawn. However, if at any time due to a catastrophe or disaster, or a succession of catastrophes or disasters, the reserve balance has been depleted below two million dollars, the commissioner may, with the approval of the industrial commission, issue premium anticipation certificates in an amount sufficient to bring the reserve balance up to two million dollars. The premium anticipation certificates must be issued for a period of from ten to twenty years, as determined by the commissioner with the approval of the industrial commission, and the interest and principal must be paid and retired by assessments levied on all policies in force with the fund. To retire these premium anticipation certificates, the commissioner shall levy a special assessment against all property insured on every policy in force with the fund; however, the total of all assessments and premiums provided for in section 26.1-22-14 may not exceed the full bureau rate. Any state department may invest its funds in the purchase of the premium anticipation certificates.

SECTION 8. AMENDMENT. Section 26.1-22-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-18. Arbitration of loss. In case an agreement as to the amount of loss sustained by any building or property insured against under this chapter cannot be arrived at between the commissioner or the commissioner's representative and the person or board representing the state, political subdivision, an international peace garden, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 314

HOUSE BILL NO. 1264  
(Tollefson, Wald, Whalen)

### COMMERCIAL INSURANCE AUDITS

AN ACT to amend and reenact section 26.1-24-10 of the North Dakota Century Code, relating to insurance audits by insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-24-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-10. Insurer's audit to determine premium - Time limitation. An insurer providing commercial ~~multiple peril~~ insurance may conduct an audit to determine the premium due or to be refunded only within one hundred eighty days after the expiration date of the policy unless the insured agrees in writing to extend that period of time. During the period allowed to conduct the audit, the insurer may not estimate the amount of premium to be refunded to or paid by the insured.

Approved March 18, 1991  
Filed March 19, 1991



## CHAPTER 315

HOUSE BILL NO. 1522  
(Payne, Whalen)

### INSURANCE AGENT LICENSE REVOCATION

AN ACT to amend and reenact subsections 11, 12, and 13 of section 26.1-26-42 of the North Dakota Century Code, relating to grounds for revocation of an insurance agent's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 11, 12, and 13 of section 26.1-26-42 of the North Dakota Century Code are amended and reenacted as follows:

11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud ~~defined in this title~~.
12. A violation of, or noncompliance with, any insurance laws of this state, or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.
13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 316

HOUSE BILL NO. 1477  
(DeMers, Svedjan, Clayburgh)

### HEALTH CARE SERVICE REVIEW

AN ACT to provide for utilization review of health care services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purpose. The purpose of this Act is to:

1. Promote the delivery of quality health care in a cost-effective manner;
2. Assure that utilization review agents adhere to reasonable standards for conducting utilization review;
3. Foster greater coordination and cooperation between health care providers and utilization review agents;
4. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and
5. Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

SECTION 2. Definitions. For purposes of this Act, unless the context requires otherwise:

1. "Commissioner" means the commissioner of insurance.
2. "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents.
3. "Provider of record" means the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment, and services rendered to an individual.
4. "Utilization review" means a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.

5. "Utilization review agent" means any person or entity performing utilization review, except:
  - a. An agency of the federal government; or
  - b. An agent acting on behalf of the federal government, but only to the extent that the agent is providing services to the federal government.

SECTION 3. Certification. A utilization review agent may not conduct utilization review in this state unless the utilization review agent has certified to the commissioner in writing that the agent is in compliance with section 4 of this Act. Certification must be made annually on or before March first of each calendar year. In addition, a certification review agent must file the following information:

1. The name, address, telephone number, and normal business hours of the utilization review agent;
2. The name and telephone number of a person for the commissioner to contact; and
3. A description of the appeal procedures for utilization review determinations.

Any material changes in the information filed in accordance with this section must be filed with the commissioner within thirty days of the change.

SECTION 4. Minimum standards of utilization review agents. All utilization review agents must meet the following minimum standards:

1. Notification of a determination by the utilization review agent must be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review.
2. Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure must be reviewed by a physician or, if appropriate, a licensed psychologist, or determined in accordance with standards or guidelines approved by a physician or licensed psychologist.
3. Any notification of a determination not to certify an admission or service or procedure must include the principal reason for the determination and the procedures to initiate an appeal of the determination.
4. Utilization review agents shall maintain and make available a written description of the appeal procedure by which enrollees or the provider of record may seek review of determinations by the utilization review agent. The appeal procedure must provide for the following:
  - a. On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate must be

- made by a physician or, if appropriate, a licensed psychologist.
- b. Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures no later than thirty days from the date the appeal is filed and the receipt of all information necessary to complete the appeal.
  - c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal.
5. Utilization review agents shall make staff available by toll-free telephone at least forty hours per week during normal business hours.
  6. Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two working days.
  7. Utilization review agents shall comply with all applicable laws to protect confidentiality of individual medical records.
  8. Physicians or psychologists making utilization review determinations shall have current licenses from a state licensing agency in the United States.
  9. Utilization review agents shall allow a minimum of twenty-four hours following an emergency admission, service, or procedure for an enrollee or the enrollee's representative to notify the utilization review agent and request certification or continuing treatment for that condition.

However, the commissioner may find that the standards in this section have been met if the utilization review agent has received approval or accreditation by a utilization review accreditation organization.

**SECTION 5. Utilization review agent violations - Penalty.** Whenever the commissioner has reason to believe that a utilization review agent subject to this Act has been or is engaged in conduct that violates section 3 or 4 of this Act, the commissioner shall notify the utilization review agent of the alleged violation. The utilization review agent has thirty days from the date the notice is received to respond to the alleged violation.

If the commissioner believes that the utilization review agent has violated this Act, or is not satisfied that the alleged violation has been corrected, the commissioner shall conduct a hearing on the alleged violation in accordance with chapter 28-32.

If, after the hearing, the commissioner determines that the utilization review agent has engaged in violations of this Act, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon

the utilization review agent a copy of the findings and an order requiring the utilization review agent to cease and desist from engaging in the violations. The commissioner may also, at the commissioner's discretion, order:

1. Payment of a penalty of not more than ten thousand dollars for a violation that occurred with such frequency as to indicate a general business practice; or
2. Suspension or revocation of the authority to do business in this state as a utilization review agent if the utilization review agent knew that the act was in violation of this Act.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 317

HOUSE BILL NO. 1294  
(Representative Goffe)  
(Senator E. Hanson)

### **ANNUITY AND INSURANCE CANCELLATION RIGHTS**

AN ACT to create and enact sections 26.1-34-01.1 and 26.1-36-02.1 of the North Dakota Century Code, relating to a "free-look" provision for annuity and accident and health policies and certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-34-01.1 of the North Dakota Century Code is created and enacted as follows:

26.1-34-01.1. Annuity policies and certificates - Right to return. A person who purchases an annuity policy or certificate issued or delivered in this state may return the policy within twenty days of delivery to the purchaser. If a policy or certificate is returned, the purchaser is entitled to a refund of the premium, except in the sale of variable annuities where the purchaser is entitled to the value of the annuity plus all expense charges. Every annuity, policy, or certificate issued or delivered in this state must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the purchaser may return the policy or certificate within twenty days of its delivery and have the premium, or such other amount as specified above, refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

SECTION 2. Section 26.1-36-02.1 of the North Dakota Century Code is created and enacted as follows:

26.1-36-02.1. Accident and health policies and certificates - Notice of free examination. Accident and health policies and certificates must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the applicant may return the policy or certificate within ten days of its delivery and have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 318

HOUSE BILL NO. 1192  
(Committee on Industry, Business and Labor)  
(At the request of the Commissioner of Insurance)

### CHARITABLE GIFT ANNUITIES

AN ACT to create and enact chapter 26.1-34.1 of the North Dakota Century Code, relating to creating an exemption that may be granted by the commissioner of insurance for the issuance of charitable gift annuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-34.1 of the North Dakota Century Code is created and enacted as follows:

26.1-34.1-01. Application for certificate of exemption to issue gift annuities. A domestic or foreign corporation organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, scientific, or philanthropic institution and which is organized as a nonprofit organization without profit to any person, may apply to the commissioner for a certificate of exemption to receive gifts of money or other property conditioned upon, or in return for, its agreement to pay an annuity to a donor or nominee or both. The corporation shall include with its application any documents or information the commissioner reasonably requires, including:

1. Its name, location, and organization;
2. Evidence that it possesses a current tax-exempt status under the laws of the United States;
3. A designation form appointing the commissioner as its attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an annuitant or beneficiary arising out of any annuity contract;
4. A statement of the financial condition, management, and affairs of the organization including an accurate and complete financial statement consisting of a balance sheet and income and expense statement, showing the current financial condition of the corporation and sworn to by the officer of the corporation having the responsibility for preparing such statement; and
5. A filing fee of one hundred dollars coincident with its application.

26.1-34.1-02. Issuance of certificate of exemption to issue gift annuities. The commissioner shall issue a certificate of exemption if:

1. All requirements of this chapter have been met; and
2. The commissioner is satisfied that the corporation is in a position to competently execute its responsibilities relative to such annuity contracts.

26.1-34.1-03. Segregated account.

1. Every corporation possessing a certificate of exemption shall maintain a segregated account for all of its gift annuity liabilities.
2. The assets of the segregated account are not liable for any debts of the corporation other than those incurred pursuant to this chapter.
3. The segregated account must be adequate to meet the future payments under all outstanding annuity agreements.

26.1-34.1-04. Contents of annuity contract or policy form. Each charitable annuity contract or policy form used or issued by the corporation must include at least the following information:

1. The value of the property to be transferred;
2. The amount of the periodic annuity benefits to be paid;
3. The manner in which and the intervals at which payment is to be made;
4. The age of the person during whose life payment is to be made; and
5. The reasonable value as of the date of the agreement of the benefits thereby created.

26.1-34.1-05. Continued compliance. The commissioner may require that a corporation possessing a certificate of exemption submit periodically any report the commissioner determines to be desirable or necessary to ascertain compliance with requirements of this chapter. The commissioner, whenever the commissioner determines it to be expedient, may make or cause to be made an examination of the assets and liabilities and other affairs of the corporation as the same pertains to annuity agreements entered into pursuant to this chapter. The reasonable expenses incurred for any such examination must be fixed and paid in accordance with section 26.1-03-20.

26.1-34.1-06. Grounds for denial, revocation, or suspension of certificate of exemption. The commissioner may refuse to grant, or may revoke or suspend, a certificate of exemption if the commissioner finds that the corporation does not meet or continue to meet the requirements of this chapter or that the corporation has violated this chapter or chapter 26.1-04.

26.1-34.1-07. Other applicable code provisions. Except as prescribed in this chapter, the corporation is otherwise exempt from the provisions of this code and other insurance laws.

Approved March 20, 1991  
Filed March 21, 1991



## CHAPTER 319

HOUSE BILL NO. 1042  
(Legislative Council)  
(Interim Industry and Business Committee)

### **BASIC HEALTH INSURANCE COVERAGE**

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to providing basic health insurance coverage for individuals and certain employers; to provide for reports to the legislative council; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Basic health insurance coverage - Exception to required coverages. An insurance company, a nonprofit health service corporation, or a health maintenance organization may deliver, issue, execute, or renew a basic health insurance policy, health service contract, or evidence of coverage on an individual basis or an employer group, blanket, franchise, or association basis for employers with fewer than twenty-five employees. The basic policy, contract, or evidence of coverage is not subject to sections 26.1-36-08, 26.1-36-09, 26.1-36-09.1, 26.1-36-09.3, 26.1-36-12.1, and 43-13-31. The insurance company, nonprofit health service corporation, or health maintenance organization shall make the coverages required under those sections available at the option of the individual or employer and may charge an additional premium for each coverage provided. The basic policy, contract, or agreement authorized under this section is not available to an individual or employer unless that individual or employer has not had any health insurance coverage in force for at least twelve months preceding the date of application for the basic policy, contract, or agreement.

SECTION 2. COMMISSIONER'S REPORT ON BASIC HEALTH INSURANCE COVERAGE. The commissioner shall collect data from insurance companies, nonprofit health service corporations, and health maintenance organizations relating to coverage provided under section 1 of this Act. The data must include the number of groups and individuals purchasing coverage, the number of insureds, subscribers, members, and their dependents, under coverage, and the rates and rate increases or decreases for the coverage. The commissioner shall assemble a written report concerning this data and shall submit the report to the legislative council during the 1991-92 and 1993-94 interims. The commissioner shall submit a final report along with the commissioner's recommendation regarding the advisability of continuing the coverage provided under section 1 of this Act to the legislative council during the 1995-96 interim.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1997, and after that date is ineffective.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 320

HOUSE BILL NO. 1491  
(Representatives Svedjan, Gilmore, Rydell)  
(Senator Graba)

### HEALTH INSURANCE CONTESTED CLAIM NOTICE

AN ACT to amend and reenact section 26.1-36-37.1 of the North Dakota Century Code, relating to health insurance proof of loss forms and claim payment time limits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-37.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-37.1. Standard health insurance proof of loss form - Claim payment time limits. The commissioner shall prescribe by rule a standard health insurance proof of loss and claim form ~~to be supplied by every insurer and health service corporation upon request~~ for use in filing proof of loss and a claim. After receipt of a health insurance proof of loss form, the insurer shall, within fifteen business days, pay the claim or that portion of the claim that is not contested, deny the claim, or make an initial request for additional information. If a claim or a portion of a claim is contested, the insured or the insured's assignee must be notified in writing that the claim is contested and the reasons for the contest. Nothing in this notification precludes the insurer from denying the claim in whole or in part, for other reasons at a later date. Within fifteen business days of the receipt of ~~additional~~ the information initially requested, the insurer shall pay or deny the claim.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 321

HOUSE BILL NO. 1539  
(Gabrielson)

### SMALL EMPLOYER INSURANCE COVERAGE

AN ACT relating to health insurance coverage to small employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with section 3 of this Act, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the carrier in establishing premium rates for applicable health benefit plans.
2. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.
3. "Carrier" means any person who provides health insurance in this state. The term includes an insurance company, a nonprofit health service corporation, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to regulation by the commissioner.
4. "Case characteristics" include demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the carrier in the determination of premium rates for the small employer. The term does not include claim experience, health status, and duration of coverage since issue.
5. "Class of business" means all or a distinct grouping of small employers as shown on the records of the small employer carrier.
  - a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health benefit plans:
    - (1) Are marketed and sold through individuals and organizations that are not participating in the marketing

- or sale of other distinct groupings of small employers for such small employer carrier;
- (2) Have been acquired from another small employer carrier as a distinct grouping of plans;
  - (3) Are provided through an association with membership of not less than ten small employers which has been formed for purposes other than obtaining insurance; or
  - (4) Are in a class of business that meets the requirements for exception to the restrictions related to premium rates provided in paragraph 1 of subdivision a of subsection 1 of section 3 of this Act.
- b. A small employer carrier may establish no more than two additional groupings under each grouping in subdivision a on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.
  - c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.
6. "Commissioner" means the commissioner of insurance.
  7. "Health benefit plan" or "plan" means any hospital or medical expense incurred policy or certificate, health service plan contract, or health maintenance organization subscriber contract. The term does not include accident-only, credit, dental, or disability income insurance; coverage issued as a supplement to liability insurance; workers' compensation or similar insurance; or automobile medical-payment insurance.
  8. "Index rate" means for each class of business for small employers with similar case characteristics the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.
  9. "New business premium rate" means, for each class of business as to a rating period, the premium rate charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.
  10. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.
  11. "Small employer" means any person, firm, corporation, partnership, or association actively engaged in business who, on at least fifty percent of its working days during the preceding year, employed no more than twenty-five eligible employees. In determining the number of eligible employees, companies that are affiliated

companies or that are eligible to file a combined tax return for purposes of state taxation are considered one employer.

12. "Small employer carrier" means any carrier that offers health benefit plans covering the employees of a small employer.

SECTION 2. Health insurance plans subject to Act. Except as provided in this section, this Act applies to any health benefit plan that provides coverage to one or more employees of a small employer. This Act does not apply to individual health insurance policies that are subject to policy form and premium rate approval by the commissioner.

SECTION 3. Restrictions relating to premium rates.

1. Premium rates for health benefit plans subject to this Act are subject to the following:

- a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than twenty percent. This subdivision does not apply to a class of business if:

- (1) The class of business is one for which the carrier does not reject, and never has rejected, small employers included within the definition of employers eligible for the class of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claim experience or health status;
- (2) The carrier does not involuntarily transfer, and never has involuntarily transferred, a health benefit plan into or out of the class of business; and
- (3) The class of business is currently available for purchase.

- b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, may not vary from the index rate by more than twenty-five percent.

- c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

- (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate;
- (2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the

small employer as determined from the carrier's rate manual for the class of business; and

- (3) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.
- d. In the case of health benefit plans issued before the effective date of this Act, a premium rate for a rating period may exceed the ranges described in subdivisions a and b of subsection 1 for a period of five years following the effective date of this Act. In that case, the percentage increase in the premium rate charged to a small employer in such a class of business for a new rating period may not exceed the sum of:
    - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the carrier shall use the percentage change in the base premium rate; and
    - (2) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the carrier's rate manual for the class of business.
2. This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business.
  3. A small employer carrier may not involuntarily transfer a small employer into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

#### SECTION 4. Renewability of coverage.

1. Except as provided in subsection 2, a health benefit plan subject to this Act must be renewable to all eligible employees and dependents at the option of the small employer, except for the following reasons:
  - a. Nonpayment of required premiums;
  - b. Fraud or misrepresentation of the small employer, or with respect to coverage of an insured individual, fraud or misrepresentation by the insured individual or the individual's representative;
  - c. Noncompliance with plan provisions;

- d. The number of individuals covered under the plan is less than the number or percentage of eligible individuals required by percentage requirements under the plan; or
  - e. The small employer is no longer actively engaged in the business in which it was engaged on the effective date of the plan.
2. A small employer carrier may cease to renew all plans under a class of business. The carrier shall provide notice to all affected health benefit plans and to the commissioner in each state in which an affected insured individual is known to reside at least ninety days before termination of coverage. A carrier that exercises its right to cease to renew all plans in a class of business may not:
    - a. Establish a new class of business for a period of five years after the nonrenewal of the plans without prior approval of the commissioner; or
    - b. Transfer or otherwise provide coverage to any of the employers from the nonrenewed class of business unless the carrier offers to transfer or provide coverage to all affected employers and eligible employees and dependents without regard to case characteristics, claim experience, health status, or duration of coverage.

**SECTION 5. Disclosure of rating practices and renewability provisions.**

Each small employer carrier shall make reasonable disclosure in solicitation and sales materials provided to small employers, the following:

1. The extent to which premium rates for a specific small employer are established or adjusted due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer;
2. The provisions concerning the carrier's right to change premium rates and the factors, including case characteristics, that affect changes in premium rates;
3. A description of the class of business in which the small employer is or will be included, including the applicable grouping of plans; and
4. The provisions relating to renewability of coverage.

**SECTION 6. Maintenance of records.**

1. Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.
2. Each small employer carrier shall file, by March first of each year, with the commissioner an actuarial certification that the carrier is in compliance with this section and that the rating

methods of the carrier are actuarially sound. A copy of the certification must be retained by the carrier at its principal place of business.

3. A small employer carrier shall make the information and documentation described in subsection 1 available to the commissioner upon request. The information is considered proprietary and trade secret information. The commissioner may not disclose the information except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

SECTION 7. Discretion of the commissioner. The commissioner may suspend all or any part of section 3 as to the premium rates applicable to one or more small employers for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner that either the suspension is reasonable in light of the financial condition of the carrier or that the suspension would enhance the efficiency and fairness of the marketplace for small employer health insurance.

SECTION 8. Applicability of the Act. This Act applies to each health benefit plan for a small employer that is delivered, issued for delivery, renewed, or continued in this state after the effective date of this Act. For purposes of this section, the date a plan is continued is the first rating period that commences after the effective date of this Act.

Approved March 20, 1991  
Filed March 21, 1991



## CHAPTER 322

SENATE BILL NO. 2555  
(Senators Freborg, Naaden)  
(Representative Wald)

### NO-FAULT INSURANCE FUNERAL BENEFITS

AN ACT to amend and reenact subsection 2 of section 26.1-41-01 of the North Dakota Century Code, relating to basic no-fault insurance funeral benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 26.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Basic no-fault benefits" means benefits for economic loss resulting from accidental bodily injury. The maximum amount of basic no-fault benefits payable for all economic loss incurred and resulting from accidental bodily injury to any one person as the result of any one accident may not exceed thirty thousand dollars, regardless of the number of persons entitled to the benefits or the number of basic no-fault insurers obligated to pay the benefits. Basic no-fault benefits payable may not exceed one hundred fifty dollars per week per person prorated for any lesser period for work loss or survivors' income loss, or ~~one~~ three thousand five hundred dollars for funeral, cremation, and burial expenses.

Approved March 14, 1991  
Filed March 15, 1991

**CHAPTER 323**

SENATE BILL NO. 2302  
(Senator Peterson)  
(Representative Soukup)

**BUSES UNDER AUTO ACCIDENT REPARATIONS LAW**

AN ACT to create and enact a new subdivision to subsection 4 of section 26.1-41-01 of the North Dakota Century Code, relating to the definition of bus with respect to automobile accident reparations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 4 of section 26.1-41-01 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle owned by a political subdivision and operated as part of a public transit system in which all or a portion of the costs of operation are subsidized by the political subdivision or the federal government.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 324

SENATE BILL NO. 2089  
(Lips)

### AUTO ACCIDENT LOSS ALLOCATION

AN ACT to amend and reenact subsection 3 of section 26.1-41-13 and section 26.1-41-17 of the North Dakota Century Code, relating to the coordination of benefits under the Auto Accident Reparations Act and the equitable allocation of losses between insurance companies under the Auto Accident Reparations Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first five thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of five thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

SECTION 2. AMENDMENT. Section 26.1-41-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-17. Equitable allocation of losses among insurers. A basic no-fault insurer may recover ~~basic~~ no-fault benefits paid to or for the benefit of an injured person from the motor vehicle liability insurer of a secured person if:

1. The injured person has sustained a serious injury; or
2. The injury results from an accident involving two or more motor vehicles, at least one of which is a motor vehicle weighing more than six thousand five hundred pounds [2,948.35 kilograms] unloaded.

The right of recovery and the amount thereof must be determined on the basis of tort law without regard to section 26.1-41-08 by agreement between the ~~basic no-fault~~ insurers involved, or, if they fail to agree, by binding

intercompany arbitration under procedures approved by the commissioner. The amount of recovery under this section may not exceed the limits of liability of the secured person's motor vehicle liability insurance policy or other security, reduced by the amount of the liability for tort claims against the secured person covered by the policy or other security.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 325

HOUSE BILL NO. 1084  
(Wald)

### CLAIMS AGAINST INSOLVENT INSURERS

AN ACT to amend and reenact subsection 3 of section 26.1-42-02 of the North Dakota Century Code, relating to the definition of covered claim under the Property and Casualty Insurance Guaranty Association Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-42-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Covered claim" means an unpaid claim, including one for unearned premiums, within the coverage of an insurance policy to which this chapter applies issued by an insurer if the insurer becomes insolvent after July 1, 1971. The claimant or insured must be a resident of this state at the time of the insured event or the insured property must be permanently located in this state. "Covered claim" does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. A reinsurer, insurer, insurance pool, or underwriting association that has paid a claim, and become subrogated to the amount of that claim, may assert that claim against the liquidator of the insolvent insurer, but not against the insured of the insolvent insurer.

Approved March 18, 1991  
Filed March 19, 1991

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 326

HOUSE BILL NO. 1517  
(Representative Kretschmar)  
(Senator Stenehjem)

### COUNTY COURT ELIMINATION

AN ACT to establish a single trial court of general jurisdiction through the abolition of county courts and the provision for additional district court judgeships; to create and enact two new sections to chapter 27-05 of the North Dakota Century Code, relating to vacancies in the office of district court judge and the appointment of magistrates; to amend and reenact section 4-33-06, subsection 5 of section 6-05.1-05, sections 11-03-08, 11-05-16, subsection 2 of section 11-07-04, sections 11-08-06, 11-08-07, 11-09-29, subsection 3 of section 11-09.1-05, sections 11-10-02, 11-10-06, subsections 1 and 4 of section 11-10-10, sections 11-10-11, 11-10-20, 11-11-10, 11-12-05, 11-15-24, 11-17-04, subsections 1 and 2 of section 11-17-08, sections 11-19-08, 11-19-13, 11-19-14, 11-19-15, 11-19-25, 11-20-01, 11-20-03, 11-21-01, subsections 2, 4, and 5 of section 11-21-02, sections 11-21-03, 11-21-04, 11-21-12, 11-21-13, 11-21-14, 11-30-16, 12-45-01, 12-46-13, 12-51-07, subsection 2 of section 12-60-16.1, section 12-62-01.1, subsection 5 of section 12.1-01-04, sections 12.1-20-16, 14-03-09, 14-03-10, 14-03-11, 14-03-17, 14-03-19, 14-03-20, 14-03-21, 14-03-22, 14-03-24, subsection 1 of section 14-07.1-02, sections 16.1-12-03, 16.1-15-08, 16.1-15-09, 16.1-15-11, 16.1-15-13, 16.1-16-07, 23-05-06, 23-07.1-08, 23-07.1-09, 23-07.1-10, subsection 4 of section 23-07.4-01, sections 23-07.4-02, 23-07.6-05, 23-07.6-12, 24-06-05, 24-07-22, 24-07-24, 24-07-28, subsections 2 and 7 of section 25-03.1-02, section 25-03.1-03, subsection 2 of section 25-03.1-21, sections 25-03.1-38, 25-03.1-46, subsection 3 of section 25-04-05.1, subsections 2 and 3 of section 25-04-15, sections 25-11-05, 27-01-01, 27-01-01.1, 27-01-09, subsections 1 and 3 of section 27-01-10, sections 27-05-01, 27-05-06, subsection 1 of section 27-05-08, sections 27-06-01, 27-07.1-02, 27-07.1-03, subsection 1 of section 27-08.1-01, sections 27-08.1-06, 27-08.1-08, 27-09.1-14, subsection 1 of section 27-15-01, sections 27-15-02, 27-19-08, subsection 2 of section 27-20-47, subsection 2 of section 27-23-01, sections 27-23-02, 27-24-04, 28-20-22, 28-26-19, 28-29-04, subsection 3 of section 29-01-01, subsection 4 of section 29-01-09, subsection 3 of section 29-01-14, sections 29-01-15, 29-02-13, 29-07-01.1, 29-07-06, 29-10.1-38, subsection 1 of section 29-15-21, section 29-22-02, subsection 6 of section 30.1-01-06, sections 30.1-02-02, 30.1-02-07, subdivision c of subsection 2 of section 30.1-10-01, sections 30.1-32-01, 30.1-32-03, 30.1-32-04, 30.1-33-01, 30.1-33-03, 30.1-33-04, 30.1-33-05, 30.1-33-06, subsection 1 of section 30.1-34-03, sections 30.1-34-04, 30.1-34-05, 31-01-16, 31-01-18, 32-19-23, 32-19-24, 32-19-30, 32-22-18, 32-24-01, 33-06-01, 33-06-03, 33-06-04, 36-01-18, 36-11-10, 36-11-11, 37-15-18, 37-16-04, subsection 1 of section 38-10-01, sections 38-10-03, 38-10-05, 38-10-06, 38-10-08, 39-06-16, subdivision a of subsection 5 and subsection 7 of section 39-06.1-03, sections 40-02-16, 40-09-16,

40-11-13, subsections 1 and 3 of section 40-18-01, sections 40-18-06.2, 40-18-15, 40-18-15.1, 40-18-19, 40-18-20, subsection 3 of section 42-01-07, subsection 2 of section 43-23-07, sections 44-02-04, 44-02-05, 44-03-02, subsection 2 of section 44-05-01, sections 44-08-09, 44-09-01, 44-11-12, 46-04-05, 47-03-06, 47-18-22, subsection 9 of section 47-19-02, section 47-19-06, subsection 5 of section 47-24.1-01, subsection 2 of section 50-01.1-04, sections 50-06.3-07, 50-06.3-09, 50-24.1-07, 54-12-01.3, 57-26-02, 57-37.1-06, 57-37.1-12, 58-02-23, subsection 3 of section 59-01-11, section 59-02-12, subsection 6 of section 59-02-20, sections 59-04-02, 59-04-03, subsection 12 of section 59-04-04, sections 59-04-08, 59-04-10, 59-04-15, 59-04-24, 59-04-25, 59-04-26, 59-04-27, 59-04-29, 59-04-31, 59-05-28, and 59-05-55, relating to references to county courts and county judges, judicial districts, the election, term of office, and chambers of district judges, multicounty agreements to share county judge services, vacancies in the office of county court judge, and abolition of the office of municipal judge if municipal cases are transferred to county or district court; to repeal sections 11-09-22, 11-09-23, 11-11-12, 11-15-10, 24-07-25, 27-01-04, 27-01-05, chapters 27-07.1, 27-08.2, sections 27-09.1-21, 27-20-04, chapter 27-26, and section 31-09-07 of the North Dakota Century Code, relating to references to county courts and county court judges; to provide an effective date; to provide an expiration date; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. County courts abolished - Election of additional district court judges - Case file transition - Budget and property considerations.

1. Following the completion on January 1, 1995, of the terms of the judges of all county courts, the county court and office of judge of the county court in each county are abolished.
2. District court judgeships are established on January 2, 1995, in number equal to the number of county judges serving the county courts on January 1, 1991, or the number of county judges serving the county courts on January 1, 1994, whichever is the lesser number. The district court judgeships established pursuant to this subsection must be filled by election at the general election in 1994. All statutes relating to the district court apply to the district court judgeships established pursuant to this subsection, except as otherwise provided by this section.
3. The supreme court shall designate by rule, prior to January 1, 1994, the judicial district for each additional district court judgeship established pursuant to subsection 2. The judicial district designated by the supreme court for each district court judgeship established pursuant to subsection 2 is the area of election for that office at the general election in 1994. The supreme court shall designate, prior to January 1, 1994, staggered terms for each district court judgeship established pursuant to subsection 2 in a manner that results in approximately one-third of those offices with initial terms of two years, one-third with initial terms of four years, and one-third with initial terms of six years. Any judge elected pursuant to subsection 2 shall take office on January 2, 1995, and shall hold office until completion

of the designated initial term or until a successor is elected and has qualified. Subsequent to these initial terms, a judge elected to a judgeship established by subsection 2 shall hold office for the term provided in section 27-05-02.

4. All case files, untried cases, or any other unfinished business of each county court abolished pursuant to subsection 1 must be considered case files, untried cases, and other unfinished business of the district court of the judicial district in which that county is located.
5. Beginning in 1992, the budget for the district courts submitted to the legislative assembly pursuant to section 27-01-01.1 and to the director of the budget for informational purposes pursuant to section 54-44.1-13 must include all salaries and expenses for the district court judgeships established pursuant to subsection 2. Any equipment, furnishings, and law libraries in the control and custody of the county courts on January 1, 1991, and any property acquired by county courts from that date until January 1, 1995, must be transferred on January 2, 1995, to the custody and control of the district court of the county in which each county court is located until the state court administrator determines that these items are no longer needed by the district court. Upon that determination, custody and control of the property must revert to the county.

SECTION 2. AMENDMENT. Section 4-33-06 of the North Dakota Century Code is amended and reenacted as follows:

4-33-06. Authority for inspections - Warrants. To effectuate the purposes of this chapter, the commissioner may with a warrant or the consent of the owner make reasonable inspection of any premises in this state and any property therein or thereon and may without a warrant with the assistance of any law enforcement agency provided for in this code stop and inspect, in a reasonable manner, any means of conveyance moving within this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this chapter, and may make any other reasonable inspection of any premises or means of conveyance for which, under the Constitution of the United States and the Constitution of North Dakota, no warrant is required.

The appropriate county district courts in this state ~~have authority to~~ may issue warrants for such inspections upon a showing by the commissioner that there is probable cause to believe that there exists in or on the property to be inspected a pest, host, or other article subject to this chapter.

SECTION 3. AMENDMENT. Subsection 5 of section 6-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

5. On such date of hearing, upon finding that due notice has been given as required by this section and upon finding that the applicant subsidiary trust company has been duly authorized to commence the business for which it is organized by the state banking board, or by the comptroller of the currency if the applicant is a national banking association, and that the applicant has made such deposit of securities as may be required by law, the



district court shall enter an order substituting the applicant in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application, and excepting fiduciary capacities in any account with respect to which a person entitled to receive mailed notice pursuant to this section has filed objection to substitution and has appeared and been heard in support thereof. Upon entry of such order, or at such later date as may be specified in such order, the applicant subsidiary trust company must, without further act, be substituted in every such fiduciary capacity. ~~Such~~ The substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state; ~~or in the office of the clerk of any county court in this state;~~ or by filing a certified copy of such order in the office of the register of deeds of any county of this state to be recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

SECTION 4. AMENDMENT. Section 11-03-08 of the North Dakota Century Code is amended and reenacted as follows:

11-03-08. Board of county commissioners to appoint county officers - Exception. The board of county commissioners appointed by the governor, after the members thereof have qualified, shall appoint all the county officers of the newly organized county. Such officers, after having qualified, shall hold their offices until the first general election thereafter and until their successors are elected and qualified. ~~Any county judge in office within the boundaries of a county organized under this chapter shall continue to hold office in the new county during the remainder of the term and shall give bond to the new county as required by law.~~

SECTION 5. AMENDMENT. Section 11-05-16 of the North Dakota Century Code is amended and reenacted as follows:

11-05-16. Judicial actions and proceedings transferred to courts of adjoining county. All actions or suits of every nature which have been filed or which are pending in any of the courts of a district court serving the petitioning county on the first day of January following the governor's proclamation shall be transferred to the courts of the adjoining county or counties in accordance with the provisions of this section:

- 1- All such actions or suits filed or pending in the district court of the petitioning county shall be transferred by the clerk of such court to the clerk of the district court of the adjoining county.
- 2- All actions pending in the county court of the petitioning county shall be transferred to the county court of the adjoining county and shall be heard, tried, and determined by that court as though originally filed therein.

~~If the petitioning county is joined to two or more adjoining counties, the judge of the court in which any action or proceeding is pending in the petitioning county may direct to which of the adjoining counties the action or proceeding shall be transferred.~~

SECTION 6. AMENDMENT. Subsection 2 of section 11-07-04 of the North Dakota Century Code is amended and reenacted as follows:

2. If the county previously elected county commissioners at large and the county has been divided into districts, those elected in districts designated by even numbers ~~shall~~ constitute one class and those elected in districts designated by odd numbers ~~shall~~ constitute the other class. If election of commissioners at large is necessary and the county previously was districted, classes of such commissioners ~~shall~~ must be determined by assigning a number to their respective offices according to the numerical total of the votes cast for them at the general election at which they were elected. The commissioners of one class elected in the first election held following a redistricting pursuant to this chapter ~~shall~~ hold office for two years and those of the other class ~~shall~~ hold office for four years. The determination of the two classes ~~shall~~ must be by lot so that one-half of the commissioners, as nearly as practicable, may be elected biennially. ~~The county A~~ district judge serving the county shall perform the lot in the presence of all of the newly elected commissioners affected by this subsection within thirty days after the date of the first general election following redistricting or election of commissioners at large, if required, and shall certify in writing the results of such lot to the county auditor within five days after its completion.

SECTION 7. AMENDMENT. Section 11-08-06 of the North Dakota Century Code is amended and reenacted as follows:

11-08-06. Officers in county adopting consolidated office form of government. In addition to the board of county commissioners provided for by this title, the officers in a county which has adopted the county consolidated office form of government are as follows:

1. One county auditor who shall be ex officio register of deeds and clerk of the district court.
2. One state's attorney.
3. One sheriff.
4. One county treasurer, unless the office with its attendant powers and duties is combined with and conferred upon the county auditor by the board of county commissioners but no added compensation may be paid the county auditor in said capacity.
5. One county superintendent of schools.
6. One coroner.
7. ~~One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering into the agreement.~~

SECTION 8. AMENDMENT. Section 11-08-07 of the North Dakota Century Code is amended and reenacted as follows:

11-08-07. Appointive officers - County commissioners elected - Terms of office - How vacancy filled. Each The board of county commissioners shall appoint each county officer mentioned in section 11-08-06, except the members of the board of county commissioners, who shall must be elected in the manner provided in section 11-11-02, and the county judge, who shall be elected in the manner and method prescribed by general statute; shall be appointed by the board of county commissioners and. Each county officer shall hold office for a term of four years, except as otherwise provided in this chapter, and until his the officer's successor is duly appointed and qualified. Any The board of county commissioners shall fill any vacancy resulting from any cause shall be filled by the board of county commissioners.

SECTION 9. AMENDMENT. Section 11-09-29 of the North Dakota Century Code is amended and reenacted as follows:

11-09-29. Public administrator - Office abolished - Who to perform duties. In counties adopting any form of county managership, the office of public administrator shall be is abolished. The county manager shall perform the functions of that office shall be performed by the county manager in counties adopting a short form of county managership, and in counties adopting a county manager form of government, by a suitable person appointed by the county presiding judge of the judicial district in which the county is located, after consultation with the judges of the judicial district. Any person so appointed shall is entitled to receive compensation at the rate allowed the administrator of an estate.

SECTION 10. AMENDMENT. Subsection 3 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Provide for county elected and appointed officers and employees, their selection, powers, duties, qualifications, and compensation, and the terms of county appointed officers and employees. However, after adoption of a home rule charter a county elected office may not be eliminated or combined with another office except upon approval of a majority of the electors of the county voting upon the question at a primary or general election. Notwithstanding the other provisions of this subsection, a charter or ordinance or act of a governing body of a home rule county may not supersede any state law concerning the office or jurisdiction of the county court or county judge.

SECTION 11. AMENDMENT. Section 11-10-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code, must have the following officers:

1. One county auditor.
2. One register of deeds in counties having a population of more than six thousand.
3. One clerk of the district court.
4. One state's attorney.

5. One sheriff.
6. ~~One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering the agreement.~~
7. One county treasurer.
8. 7. One coroner.
9. 8. One county superintendent of schools.
10. 9. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the clerk of the district court must be the register of deeds, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. For a county which has properly initiated the option and it is funded by the legislative assembly pursuant to section 11-17-11, the board of county commissioners may provide for the register of deeds services in any appropriate manner. Counties having a population of six thousand or less and exercising the option provided in section 11-17-11 may contract with the state court administrator for the provision of shared funding for register of deeds services. ~~In counties having a population of twenty five thousand or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty five thousand, the clerk of district court must be clerk of county court unless the county has properly initiated the option and it is funded by the legislative assembly pursuant to section 11-17-11, in which case the county judge may determine that the clerk of district court may provide clerk services to the county court or appoint a clerk of county court.~~ The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, ~~county judge,~~ and clerk of the district court, who must be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who must be chosen in the manner prescribed in section 11-11-02, and the county coroner, who must be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election which occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 11-17-11.

SECTION 12. AMENDMENT. Section 11-10-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a

population of less than ten thousand, where the amount must be ten thousand dollars.

2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. ~~A county judge, ten thousand dollars.~~
9. A county superintendent of schools, five hundred dollars.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10. The bond for the clerk of a district court which is state funded pursuant to section 11-17-11 must be set by the supreme court.

SECTION 13. AMENDMENT. Subsections 1 and 4 of section 11-10-10 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, ~~county judge~~, clerk of district court, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census ~~shall have~~ ~~has~~ been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.
4. ~~The salaries of the judges of county courts must be as provided in section 27-07.1-04.~~ The county superintendent of schools ~~shall is~~ entitled to receive for any trips necessarily made within ~~his the~~ county in the performance of school district reorganization duties the same mileage ~~as he receives~~ received under the provisions of section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county

official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

**SECTION 14. AMENDMENT.** Section 11-10-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-11. Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, ~~county judge~~, clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section. The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 11-17-11 must be set by the supreme court.

**SECTION 15. AMENDMENT.** Section 11-10-20 of the North Dakota Century Code is amended and reenacted as follows:

11-10-20. Board of county commissioners to provide offices, courtroom, jail - Where public records kept - Authorization for central filing of documents of register of deeds, and clerk of district court, and ~~county judge~~. The board of county commissioners shall provide a courtroom and jail, and shall provide offices in the courthouse of the county for the sheriff, county treasurer, register of deeds, auditor, clerk of the district court, state's attorney, ~~county judge~~, county superintendent of schools, and any other officer who has charge of public records. If there is no courthouse in the county or if the courthouse erected has not sufficient capacity, such offices ~~shall~~ must be furnished by the county in a suitable building at the county seat for all elected officials, and at any place within the county for appointive or administrative officials, at the lowest rent to be obtained, provided that this section ~~shall~~ does not apply where county officials may serve more than one county as may be otherwise authorized by law. The board of county commissioners may provide by resolution for the filing in a single location of documents maintained by the register of deeds, and the clerk of the district court, and the ~~county judge~~. The resolution ~~shall~~ must state in which office the filing is to be done, the persons who are to have custody of and access to the central files, and ~~shall~~ must list the documents which are to be centrally filed.

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

11-11-10. Power of board to preserve order - Fines - Collection. The board of county commissioners ~~shall~~ have has power to preserve order when sitting as a board and may punish contempts by fines of not more than five dollars or by imprisonment in the county jail for not more than twenty-four

hours. The board may enforce obedience to its orders by attachment or other compulsory process, and when fines are assessed by it, they may be collected before any county district judge having jurisdiction, and, within ten days after they are collected, ~~shall~~ must be paid into the treasury of the county to be added to the state school fund.

SECTION 17. AMENDMENT. Section 11-12-05 of the North Dakota Century Code is amended and reenacted as follows:

11-12-05. Commissioners for new districts appointed. The members of the board of county commissioners, ~~the county~~ a district judge serving the county, and the county auditor shall meet immediately after the county has been redistricted and shall appoint one commissioner for each of the new districts. ~~Such~~ The commissioners ~~shall~~ hold office until their successors are elected and qualified.

SECTION 18. AMENDMENT. Section 11-15-24 of the North Dakota Century Code is amended and reenacted as follows:

11-15-24. Transportation of prisoner. The sheriff of each county shall conduct to the penitentiary all persons convicted in his county and sentenced to be confined in the penitentiary as soon as may be after conviction. The sheriff may conduct patients to the state hospital when directed to do so by the county district court.

SECTION 19. AMENDMENT. Section 11-17-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-17-04. Fees to be charged by the clerk of the district court ~~and county court~~. The clerk of the district court ~~and county court~~ shall charge and collect the following fees in civil cases:

1. For filing a case for decision in district court ~~or county court~~ which is not a small claims action, twenty dollars.
2. For filing a small claims action in county district court, ten dollars.
3. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsections 1 and 2, five dollars.
4. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.

In addition to the fee required under subsection 1, the clerk of court shall charge and collect a fee of ten dollars. This fee must be deposited with the county treasurer as provided under ~~sections~~ section 11-17-05 ~~and 27-07-1-12~~ and thereafter must be deposited with the state treasurer and credited to an indigent civil legal services fund in the state treasury. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located nor may the clerk of court charge or collect the additional ten dollar fee prescribed by this section from the state or an agency thereof or from a political subdivision or agency thereof.

SECTION 20. AMENDMENT. Subsections 1 and 2 of section 11-17-08 of the North Dakota Century Code are amended and reenacted as follows:

1. Unless otherwise directed by rules of the supreme court, clerks of the district ~~and county~~ courts may remove from the files in their offices and destroy:
  - a. All records in civil actions in which judgment has not been entered and nothing has been filed of record for more than thirty years.
  - b. All records, except the original pleadings, transcripts of testimony, and stipulations signed by the parties or their attorneys, in civil actions in which:
    - (1) Judgment has been entered and nothing has been filed of record for more than ten years if the judgment was not renewed or twenty years if the judgment was renewed.
    - (2) Judgment has been satisfied for more than twenty years.
    - (3) The action has been dismissed for more than twenty years.
2. Unless otherwise directed by the rules of the supreme court, clerks of district ~~and county courts~~ court may destroy:
  - a. Shorthand notes and recorded testimony that are on file in the clerk's office when those shorthand notes and recorded testimony have been transcribed into any public record that is on file in the office for more than ten years.
  - b. Shorthand notes and recorded testimony that have been retained for a period of at least twenty years and not transcribed into public record in any action in which:
    - (1) Judgment has been entered and the time for appeal has expired.
    - (2) Judgment has been satisfied.
    - (3) The action has been dismissed.
  - c. Exhibits twenty years after:
    - (1) Judgment has been entered and the time for appeal has expired.
    - (2) Judgment has been satisfied.
    - (3) The action has been dismissed.

SECTION 21. AMENDMENT. Section 11-19-08 of the North Dakota Century Code is amended and reenacted as follows:

11-19-08. Subpoenas for witnesses - Fees - Contempts. The coroner may issue subpoenas within ~~his~~ the coroner's county for witnesses, returnable forthwith or at such time and place as ~~he shall direct~~ the coroner directs.



Witnesses before a coroner's jury ~~shall be~~ are allowed the same fees as are allowed witnesses in county district court. The coroner has the same authority as a county district judge in a criminal case to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying ~~his~~ the coroner's process.

SECTION 22. AMENDMENT. Section 11-19-13 of the North Dakota Century Code is amended and reenacted as follows:

11-19-13. Coroner may order arrest. If the person charged by the jury with the commission of a crime is present, the coroner may order that person's arrest by an officer or by any other person present, and then must make a warrant requiring the officer or other person to take that person before a county district judge. If the person charged is not present and the coroner believes that person can be arrested, the coroner may issue a warrant to the sheriff of the county requiring the sheriff to arrest the person and take that person before a county district judge.

SECTION 23. AMENDMENT. Section 11-19-14 of the North Dakota Century Code is amended and reenacted as follows:

11-19-14. Warrant returnable to a county district judge. The warrant of the coroner ~~shall be~~ is of equal authority with that of a county district judge. When the person charged is brought before the county district judge, the same proceedings shall be had as in other criminal proceedings.

SECTION 24. AMENDMENT. Section 11-19-15 of the North Dakota Century Code is amended and reenacted as follows:

11-19-15. Warrant of coroner to recite verdict and is foundation for proceedings of judge. The warrant of the coroner ~~shall~~ must recite substantially the transactions before ~~him~~ the coroner and the verdict of the jury leading to the arrest. ~~Such~~ The warrant ~~shall be~~ is sufficient foundation for the proceedings of the county district judge.

SECTION 25. AMENDMENT. Section 11-19-25 of the North Dakota Century Code is amended and reenacted as follows:

11-19-25. Coroner's fees paid out of county treasury - Duty of county auditor. The fees and mileage allowed to the coroner ~~shall~~ must be paid out of the county treasury and the coroner's bill ~~shall~~ must be presented to the county auditor and filed by ~~him~~ the coroner with the county district judge.

SECTION 26. AMENDMENT. Section 11-20-01 of the North Dakota Century Code is amended and reenacted as follows:

11-20-01. Duties of county surveyor - Surveys presumptively correct. The county surveyor shall make all surveys of land within the county which ~~he~~ the county surveyor may be called upon to make by the owner of the land or ~~his~~ the owner's representative, or which ~~he~~ the county surveyor is directed to make by the district or county courts court, by the board of county commissioners, or by the board of township supervisors of any township within the county. ~~He~~ The county surveyor also shall make a survey of the public roads and of all lands, tracts, or lots owned by the county when directed to do so by the board of county commissioners. The surveys of the county surveyor or of ~~his~~ the county surveyor's deputies ~~shall be~~ are presumptively correct.

SECTION 27. AMENDMENT. Section 11-20-03 of the North Dakota Century Code is amended and reenacted as follows:

11-20-03. Assistants - Appointment - Qualifications. The county surveyor may appoint all chainmen, markers, and assistants required to make a survey. When the survey is of lines and monuments in dispute between parties or is made by order of the district ~~or county~~ court, the chainmen must be disinterested persons.

SECTION 28. AMENDMENT. Section 11-21-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-21-01. Public administrator - Appointment - Term of office. The county court of each presiding judge of the judicial district in which a county is located may, after consultation with the judges of the judicial district, appoint a public administrator for that county. A public administrator may be a corporation. The initial appointments under this section may be made upon completion of the terms of public administrators elected in 1984. The public administrator shall hold office for four years and until a successor is appointed and qualified. Two or more county courts The presiding judge may appoint a single public administrator to serve their respective counties more than one county within the district court's jurisdiction.

SECTION 29. AMENDMENT. Subsections 2, 4, and 5 of section 11-21-02 of the North Dakota Century Code are amended and reenacted as follows:

2. Account annually to the judge of the county district court for all estates and property under his the public administrator's official control and care, or whenever required so to do by the said judge.
4. Turn over all property and estates in his the public administrator's official care and control to any other administrator, executor, or guardian designated by the judge of the county district court, and truly account for the same.
5. Perform such other acts and duties properly relating to the office as may be ordered by the county district judge.

SECTION 30. AMENDMENT. Section 11-21-03 of the North Dakota Century Code is amended and reenacted as follows:

11-21-03. Bond of public administrator may be increased - Annual statement. The judge of the county district court shall require the public administrator to make a statement annually, under oath, of the amount of property in his the administrator's hands or under his the administrator's control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property. The court, from time to time and as occasion may require, may demand additional security from such the administrator, and if the same is not furnished within twenty days after such demand, may remove the public administrator and appoint another.

SECTION 31. AMENDMENT. Section 11-21-04 of the North Dakota Century Code is amended and reenacted as follows:

11-21-04. Filing of bond and oath. The public administrator shall file his the administrator's oath and bond with the judge of the county

district court. The bond and oath ~~shall~~ must be recorded at length in the record books of the court.

SECTION 32. AMENDMENT. Section 11-21-12 of the North Dakota Century Code is amended and reenacted as follows:

11-21-12. Giving notice on taking charge of estate - Penalty for failure. The public administrator, immediately upon taking charge of any estate except one over which ~~he shall have~~ the administrator has taken charge under the order of the county district court for the purpose of administering the same, shall file in the office of the county district court a notice that ~~he the administrator~~ has taken charge of such the estate. If a public administrator fails to file such the notice, ~~he the administrator~~ shall forfeit and pay to the persons entitled to the estate a sum not exceeding two hundred dollars and the court may remove the public administrator from office. The forfeiture shall be recovered before the county district court on motion and after reasonable notice of such the motion has been given to the public administrator.

SECTION 33. AMENDMENT. Section 11-21-13 of the North Dakota Century Code is amended and reenacted as follows:

11-21-13. Court may order public administrator to account to successors. The county district court, at any time and for good cause shown, may order the public administrator to account for and deliver all money, property, or papers belonging to an estate in ~~his the administrator's~~ hands, to ~~his the administrator's~~ successor in office, to the heirs of the estate, or to any personal representative or conservator regularly appointed as provided by law.

SECTION 34. AMENDMENT. Section 11-21-14 of the North Dakota Century Code is amended and reenacted as follows:

11-21-14. Removal from office. The public administrator may be removed from office in the same manner and for the same reasons as other public officers may be removed except that for the reasons specified in sections 11-21-03 and 11-21-12 a public administrator may be removed summarily upon the motion of the judge of the county district court.

SECTION 35. AMENDMENT. Section 11-30-16 of the North Dakota Century Code is amended and reenacted as follows:

11-30-16. Actions transferred to courts of adjoining county. All actions or suits of every nature that have been filed or are pending in any of the courts of the unorganized county on January first following the governor's proclamation, or that thereafter may arise or be instituted, ~~shall~~ must be transferred, brought, and tried in the courts of the adjoining organized county to which the unorganized county is attached. ~~Actions pending in a county court in the unorganized county shall be transferred to and tried before the county judge in the adjoining organized county whose office is located nearest to the courthouse of said unorganized county.~~

SECTION 36. AMENDMENT. Section 12-45-01 of the North Dakota Century Code is amended and reenacted as follows:

12-45-01. Inquest required. If a person confined in the penitentiary or the North Dakota industrial school dies, the warden or superintendent

immediately shall notify the coroner of Burleigh County or Morton County, as the case may be, or when there is a vacancy in the office, or the coroner is absent or unable to act, ~~the county a district judge of serving~~ the county. ~~Such~~ The coroner or ~~county~~ district judge so notified immediately shall take possession of the body of ~~said~~ the deceased and remove the ~~same~~ body from the penitentiary or North Dakota industrial school and retain ~~said~~ the body for at least twenty-four hours, and shall hold an inquest thereon and inquire carefully into the cause of ~~said~~ the deceased's death, in the manner provided by law in cases of persons supposed to have died by unlawful means. No officer or employee of the penitentiary or North Dakota industrial school ~~shall~~ may be placed or permitted to serve on the jury at the inquest.

SECTION 37. AMENDMENT. Section 12-46-13 of the North Dakota Century Code is amended and reenacted as follows:

12-46-13. Who may be sent to state industrial school - Court procedure. Whenever a person under the age of eighteen years is found guilty in any district ~~or county~~ court of a crime or public offense, the court may in its discretion order the person be first committed to the state industrial school, however the court shall order that the person be first committed to the state industrial school if the person is under sixteen years of age. A person so committed attaining the age of eighteen years ~~shall~~ must be transferred to a penal institution or detention facility to serve the balance of ~~his~~ the person's sentence. A person so committed who attains the age of sixteen years may be transferred after the person has been given an administrative hearing to determine if the safety of other residents or the general public justifies the transfer. A person sentenced under this section ~~shall~~ have ~~has~~ all the rights to sentence reduction for good and meritorious conduct and all the pardon and parole rights of an adult sentenced to a penal institution.

SECTION 38. AMENDMENT. Section 12-51-07 of the North Dakota Century Code is amended and reenacted as follows:

12-51-07. Prisoners eligible for commitment to state farm. The judges of the district courts ~~and county courts~~ may commit to the state farm, so far as the capacity of the farm shall permit, all male persons who otherwise would be committed to the county jail or to the penitentiary for violation of any criminal law of this state, where the sentence is more than thirty days but not more than one year provided that no person ~~shall~~ may be committed to the state farm who:

1. Has at any time been convicted of a sexual offense;
2. Has served a sentence or portion thereof in a correctional facility upon conviction of a felony; or
3. Has a history of moral or sexual degeneration or of violent assaultive behavior which has resulted in physical injury or serious psychological harm to others.

SECTION 39. AMENDMENT. Subsection 2 of section 12-60-16.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Court" means the supreme court, district courts, ~~county courts,~~ and municipal courts of the North Dakota judicial system.

SECTION 40. AMENDMENT. Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01.1. County and city officials to furnish crime statistics to director. In an effort to assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the director, with the approval of the attorney general, may call upon and obtain from the clerks of district courts, ~~county courts,~~ municipal courts, sheriffs, police departments, and state's attorneys all information that the director may deem necessary in ascertaining the condition of crimes and criminal activity in North Dakota. It is the duty of the ~~said~~ officials to furnish any such information so requested by the director on whatever forms or in whatever manner the director may prescribe.

SECTION 41. AMENDMENT. Subsection 5 of section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

5. "Court" means any of the following courts: the supreme court, a district court, a ~~county court,~~ and where relevant, a municipal court.

SECTION 42. AMENDMENT. Section 12.1-20-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-20-16. Appointment of a guardian ad litem in prosecution for sex offenses. A minor who is a material or prosecuting witness in a criminal proceeding involving an act in violation of sections 12.1-20-01 through 12.1-20-08, or section 12.1-20-11 may, at the discretion of the ~~district court,~~ have the witness' interests represented by a guardian ad litem at all stages of the proceedings arising from the violation. The appointment may be made upon the order of the court on its own motion or at the request of a party to the action. The guardian ad litem may, but need not, be a licensed attorney and must be designated by the court after due consideration is given to the desires and needs of the child. A person who is also a material witness or prosecuting witness in the same proceeding may not be designated guardian ad litem. The guardian ad litem shall receive notice of and may attend all depositions, hearings, and trial proceedings to support the child and advocate for the protection of the child but may not separately introduce evidence or directly examine or cross-examine witnesses. The expenses of the guardian ad litem, when approved by the judge, must be paid by the ~~county wherein the alleged offense took place if the action is prosecuted in county court,~~ and by the state if the action is prosecuted in ~~district court.~~ The state shall also pay the expenses of the guardian ad litem in commitment proceedings held in ~~county district court pursuant to subsection 7 of section 27-07-1-17~~ chapter 25-03.1.

SECTION 43. AMENDMENT. Section 14-03-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by magistrates appointed ~~and assigned under section 27-07-1-07~~ by the ~~presiding judge of the judicial district,~~ by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious

denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

SECTION 44. AMENDMENT. Section 14-03-10 of the North Dakota Century Code is amended and reenacted as follows:

14-03-10. Marriage may not be solemnized without license - Residence required. ~~No~~ A person ~~shall~~ may not solemnize any marriage until the parties thereto ~~shall~~ produce a license regularly issued not more than sixty days prior to the date of ~~such~~ the marriage by ~~the county~~ a district judge of serving the county in which either of the contracting parties or the parents of either of the parties resides, or if such county is unorganized, or disorganized, of the county to which it is attached for judicial purposes, or if the contracting parties are residents of another state by the county a district judge of serving the county wherein the marriage is to be solemnized according to the terms of section 14-03-19. For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota shall be deemed to reside in the county wherein he is stationed.

SECTION 45. AMENDMENT. Section 14-03-11 of the North Dakota Century Code is amended and reenacted as follows:

14-03-11. Who issues marriage license to county district judge. When a county district judge shall desire desires to have a license for ~~his~~ the judge's own marriage issued in the county of his the judge's residence, he the judge may request ~~the county~~ another district judge of another county to act in ~~his the judge's~~ stead upon the application ~~therefor.~~ Such for the license. The other county district judge shall have has the power and authority to issue the license in the county of the residence of the judge seeking the ~~same.~~ Such license. The request shall must be in writing and shall must be filed, with the application and other papers relative to it, and ~~shall~~ must be recorded in the marriage record. Upon the return of ~~such the license,~~ the county district judge of serving the county in which it was issued may record it and note the record thereon notwithstanding ~~said the judge is one of the contracting parties named therein in the license.~~

SECTION 46. AMENDMENT. Section 14-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-17. Application for license. When application is made to any county district judge of this state for a marriage license, he the judge shall inquire of the applicant upon oath relative to the legality of the contemplated marriage. ~~He~~ The judge may examine other witnesses upon oath. The facts relative to the legality of the marriage may be submitted to the county district judge by affidavit. The county district judge also shall require each applicant to submit the following facts upon blanks provided by the county:

1. An affidavit of some disinterested, credible person showing that the female and male are over the age of eighteen years. If the female or the male is under the age of eighteen years, the county district judge shall require the consent of the parents or guardian, if any, to be given personally, or by a certificate of consent signed by parents or guardian under oath, and sworn to before a notary public or other officer qualified by law to administer oaths.

- 2. An affidavit showing whether or not either or both of the parties have been divorced. If a decree of divorce has been granted to either or both of the parties, a certified copy of the decree must be filed with the application, and if either or both parties are subject to a subsisting order to provide child support or alimony combined with child support pursuant to the provisions of a divorce decree or judgment, the county district judge shall cause a copy of the application for license to be filed in such prior divorce action and shall secure from the applicants a signed acknowledgment of any provision for child support or alimony combined with child support contained in such prior divorce decree or judgment. A license ~~shall~~ may not be issued if it contravenes any provisions of the decree of divorce.
- 3. An affidavit of a disinterested, credible person that the applicants are not habitual criminals.

All affidavits shall be subscribed and sworn to before a person authorized to administer oaths. The county district judge shall retain on file in ~~his~~ the judge's office all papers and records pertaining to all marriage licenses. Anyone knowingly swearing falsely to the statements contained in any affidavit mentioned in this section shall be punished as provided in section 14-03-28.

SECTION 47. AMENDMENT. Section 14-03-19 of the North Dakota Century Code is amended and reenacted as follows:

14-03-19. License issued to all who comply with law. If a county district judge is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, or in the case where both of the contracting parties are residents of another state, if ~~such~~ the parties present a valid marriage license regularly issued not more than sixty days prior thereto by the duly authorized officials of their state, then the county district judge shall issue and sign a marriage license in duplicate and affix ~~his~~ the judge's seal to both the original and the duplicate.

SECTION 48. AMENDMENT. Section 14-03-20 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-20. License and certificate. The marriage license and certificate of the person solemnizing the marriage shall be upon one blank form in duplicate consisting of two pages with a perforated seem to make it readily detachable. The form ~~shall~~ must be substantially as follows:

MARRIAGE LICENSE

State of North Dakota, )  
 ) ss.  
 County of ----- )

To any person authorized by law to perform the marriage ceremony, greeting:

You are hereby authorized to join in marriage ----- of -----, aged ----- who has ----- been divorced, and ----- of -----, aged ----- who has ----- been divorced, and of this

license and your certificate you will make due return to my office within five days.

Dated at ----- this ----- day of -----, 19--.  
(Seal)

-----  
County District Judge

CERTIFICATE OF MARRIAGE

I hereby certify that the persons named in the foregoing license were by me joined in marriage at ----- county of ----- State of North Dakota, on the ----- day of -----, 19-----.

In the presence of  
-----  
-----  
-----  
Witnesses

Every certificate of marriage ~~shall~~ must be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage.

SECTION 49. AMENDMENT. Section 14-03-21 of the North Dakota Century Code is amended and reenacted as follows:

14-03-21. License and certificate returned to county district judge - Duplicate delivered to persons married - Records kept. When a person authorized by law ~~shall solemnize~~ solemnizes a marriage, ~~he~~ that person shall fill out and sign the certificate following the license in duplicate, giving ~~his~~ the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which ~~he~~ the minister or priest is connected. The original copy of the certificate and license ~~shall~~ must be returned to the county district judge who issued the license within five days after the date of the solemnization of the marriage, and the duplicate copy ~~shall~~ must be immediately delivered to the persons married. The judge shall file the original copy in ~~his~~ the judge's office and retain it as part of ~~his~~ the judge's records. Any person who willfully neglects to make such return within the time required shall be punished as provided in section 14-03-28.

SECTION 50. AMENDMENT. Section 14-03-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-22. Marriage license fee - Supplemental fee - Duties of officers. For the issuance and filing of a marriage license the county district judge shall collect the sum of six dollars from the party applying for the license. The judge shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund, pursuant to chapter 14-07.1. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and



certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 51. AMENDMENT. Section 14-03-24 of the North Dakota Century Code is amended and reenacted as follows:

14-03-24. Certified record is evidence. The books of record of marriage licenses issued and certificates returned which are kept by ~~the county~~ a district judge of serving any county, or copies of such entries certified by ~~such~~ the judge under the seal of the court, and certified copies of the records of the registrar of vital statistics, ~~shall~~ must be received as evidence in all courts, and ~~shall be~~ are prima facie evidence in all courts and places of the facts stated therein.

SECTION 52. AMENDMENT. Subsection 1 of section 14-07.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court or county court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

SECTION 53. AMENDMENT. Section 16.1-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-12-03. Certificate of nomination to contain only one name - Person to participate in only one nomination - Exception. No certificate of nomination provided for by this chapter, except in the case of presidential electors, may contain the name of more than one nominee for each office to be filled. Except for persons holding or seeking nominations to offices filled by electors of the entire state or of any district greater than a county and except for persons holding or seeking nomination to the office of county judge, any person elected or appointed to an office appearing on the no-party ballot or seeking nomination and election to a no-party office may also seek nomination to legislative office and may serve in the legislative assembly. Except as may be permitted in this section, no person may participate directly or indirectly in the nomination of more than one person for each office to be filled on the general election ballot, except a person may sign a certificate of nomination by petition for more than one person for each office, and no person may accept a nomination to more than one office on the general election ballot. No political party is entitled to more than one set of nominees on the official general election ballot.

SECTION 54. AMENDMENT. Section 16.1-15-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-08. Wrapping and returning of ballots to county district judge or magistrate. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to

be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers must then be folded tightly together and the wrapper must be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots which are void must be wrapped in a separate wrapper and must be marked "void". Ballots which are spoiled must be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots must be kept separate. The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper must be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers must be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, must be returned either in person or by mail to the county a district judge serving the county or to the a magistrate for the county appointed and assigned under section 27-07-1-07 by the presiding judge of the judicial district. Ballots used with any electronic voting system or counted by an electronic counting machine must be wrapped, sealed, and returned as provided in this section.

SECTION 55. AMENDMENT. Section 16.1-15-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial

number which must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the county district judge or to the a magistrate for the county appointed and assigned under section 27-07.1-07 by the presiding judge of the judicial district.

SECTION 56. AMENDMENT. Section 16.1-15-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to county district judge or magistrate. Voting machines must remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine must be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the county district judge or to the a magistrate of the county appointed and assigned under section 27-07.1-07 by the presiding judge of the judicial district at the same time as the ballots are delivered to him pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

SECTION 57. AMENDMENT. Section 16.1-15-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-13. County District judge or magistrate to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the county district judge or the magistrate shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which shall be securely locked. The boxes must be placed in a fireproof vault and must be kept securely for forty-five days. They may not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county district judge or the magistrate that no contest is pending, the ballots must be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots may not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county district judge or the a magistrate as provided in this section must be received in evidence without introducing further foundation.

SECTION 58. AMENDMENT. Section 16.1-16-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county district judge or to the a magistrate for the county appointed and assigned under section 27-07.1-07 by the presiding judge of the

judicial district of any county where ~~he~~ the contestant or the contestee desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county district judge or the magistrate to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

SECTION 59. AMENDMENT. Section 23-05-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-05-06. Removal of nuisance - Complaint to county district judge - When warrant issued. Whenever a local board of health deems it necessary for the preservation of the public health to enter any building within its jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into such building, any member of the board may make complaint under oath to a county district judge within the jurisdiction of the board, stating the facts in the case so far as ~~he~~ the member of the board has knowledge thereof. The judge thereupon shall issue a warrant directed to the sheriff or other peace officer commanding ~~him~~ the sheriff or peace officer to destroy, remove, or prevent, between the hours of sunrise and sunset, the nuisance, source of filth, or cause of sickness, under the direction of such members of the local board of health as accompany ~~him~~ the sheriff or peace officer.

SECTION 60. AMENDMENT. Section 23-07.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-08. Hearing - Order. Unless waived by the alleged tubercular person, a hearing ~~shall~~ must be held by the county district judge of serving the county in which the alleged tubercular person resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's temporary order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person shall be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has active, infectious tuberculosis in a communicable and contagious stage has not been sustained by clear and convincing evidence, the court shall dismiss the case and order that the alleged tubercular be discharged if he had been in custody prior to the hearing. If the court finds that the allegation has been sustained by clear and convincing evidence, the court shall issue an order which shall:

1. State its findings that the person does have active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health; and
2. Authorize the medical facility specified in the order to receive and keep such person in its facility for necessary and appropriate care, treatment, quarantine, and isolation for so long as the disease remains in a communicable and contagious stage and the danger to public health exists.

SECTION 61. AMENDMENT. Section 23-07.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-09. Appeal to ~~district supreme~~ court - Habeas corpus - Hearing. An appeal from an order of the judge of a ~~county~~ district court authorizing a specified medical facility to receive a person for care, treatment, quarantine, and isolation may be taken to the ~~district supreme~~ court ~~of the county~~. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of the ~~district~~ court of the county ~~in from~~ which the appeal is taken shall notify the state's attorney of the filing of such appeal. The ~~hearing~~ appeal shall be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine, and isolation shall be entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in such custody has active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health shall be made at the hearing. If the court shall decide that the person does have active, infectious tuberculosis and is dangerous to public health, such decision shall not preclude a subsequent application for a writ or the issuing of a writ upon a subsequent application, if it shall be alleged that such person shall have been restored to health.

SECTION 62. AMENDMENT. Section 23-07.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-10. Discharge - Release. All orders of the state health officer or of a judge of a ~~county~~ district court authorizing the reception and retention in custody for care, treatment, quarantine, and isolation of persons having active and infectious tuberculosis endangering public health ~~shall be~~ are effective only during the continuation of such condition and any person who is cured or who no longer has tuberculosis in a communicable and contagious stage ~~shall must~~ be discharged immediately from custody. ~~Such~~ The discharge shall be made by the state health officer or ~~his~~ designee, under the guidelines of the state health council. The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at such times and under such conditions as deemed advisable after consultation with the state health officer or ~~his~~ designee.

SECTION 63. AMENDMENT. Subsection 4 of section 23-07.4-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Upon issuance of any order under subsection 2 or 3, the state health officer or a designee of the state health officer shall promptly, personally, and confidentially notify the person who is the subject of the order, stating the grounds and provisions of the order and the right to contest the order, the right to be present at a judicial hearing in the ~~county~~ district court ~~in~~ serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person who is the subject of the order refuses to comply with the order and refuses to cooperate voluntarily with the state health officer or a designee of the state health officer, the state health officer or designee may petition the ~~county~~ district court ~~in~~

serving the county in which the person resides for an order of compliance. The state health officer or designee shall request the state's attorney in the county in which the person resides to file the petition in the county district court. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing must be made by personal service or, if the person is not available, must be mailed to the person who is the subject of the order by certified mail at the person's last known address. Proof of mailing by the state health officer or designee is sufficient notice under this section. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

SECTION 64. AMENDMENT. Section 23-07.4-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.4-02. Emergency public health procedures.

1. When the procedures under section 23-07.4-01 have been exhausted or cannot be satisfied and the state health officer or designee knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in county district court in serving the county in which the person resides to enjoin the person from engaging in or continuing to engage in such behavior. The state health officer or designee shall request the state's attorney to file the action in county district court.
2. In addition to issuance of an injunction order requested under subsection 1, the court may issue other appropriate orders including an order to take the person into custody, for a period not to exceed ninety days and place the person in a facility designated or approved by the state health officer. A custody order issued for the purpose of counseling and testing to determine whether the person has human immunodeficiency virus infection must provide for the immediate release from custody and from the facility for any person whose confirmed test results are negative and may provide for counseling or other appropriate measures to be

imposed on any person whose confirmed test results are positive. The person who is the subject of the order must be given prompt, personal, and confidential notice of the order stating the grounds and provisions of the order and notifying the person of the right to contest the order, the right to be present at a judicial hearing in the county district court ~~in~~ in serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person contests testing or treatment, no invasive medical procedures may be carried out before a hearing is held under subsection 3.

3. Any order issued by the county district court under subsection 2 is subject to review in a court hearing. Prompt, personal, and confidential notice of the place, date, and time of the court hearing and of the person's right to be present at the hearing and the right to representation by counsel during the hearing must be given to the person who is the subject of the court order. The hearing must be conducted by the court within forty-eight hours after the order is issued. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that grounds exist for the order issued by the court under subsection 2 and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person subject to the order has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.
4. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

SECTION 65. AMENDMENT. Section 23-07.6-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.6-05. Court hearing. A respondent has the right to a court hearing in the county district court ~~of~~ in serving the county in which the respondent resides. The respondent or the respondent's representative has a right to be present at the hearing. The respondent has a right to counsel and if the respondent is indigent or otherwise unable to pay for or obtain counsel, the respondent has the right to have counsel appointed. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of receipt of the request, excluding Saturdays and holidays. A request for a hearing does not stay the order of confinement. The court shall determine if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of

infection, poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health. If the order is issued by a local board, the state health officer has the right to be made a party to the proceedings.

SECTION 66. AMENDMENT. Section 23-07.6-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.6-12. Right of appeal. Any party aggrieved by an order of the county district court under this section may appeal to the supreme court.

SECTION 67. AMENDMENT. Section 24-06-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-06-05. Overseer responsible for machinery. Each overseer of highways ~~shall be~~ is responsible personally for the proper use and care of all implements while in ~~his~~ the overseer's charge, or in use in ~~his~~ the overseer's district, and any overseer of highways, or other person who, through negligence or willfully ~~shall injure~~ injures or ~~damage~~ damages such implements or ~~permit~~ permits them to be injured, ~~shall be~~ is liable for such damage to ~~such the~~ township, in an action to be brought in district court by the chairman of the board of township supervisors ~~before any county judge~~ in the township or any adjoining township.

SECTION 68. AMENDMENT. Section 24-07-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-07-22. Appeals - When and where taken. Any person who feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom to the district court in accordance with the procedure provided in section 28-34-01. ~~If the amount of damages claimed by appellant does not exceed one hundred dollars, the appeal must be taken to the county judge. If the damages claimed exceed one hundred dollars, the appeal must be taken to the district court.~~

SECTION 69. AMENDMENT. Section 24-07-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-07-24. Appeals - Filing - Approval of undertaking - Service. ~~If the appeal is taken to a county judge, the notice of appeal and undertaking shall be filed with him and the undertaking must be approved by him. If the appeal is taken to the district court, the~~ The notice of appeal and undertaking ~~shall to the district court must be~~ filed with the clerk of such the court and the undertaking must be approved by the judge thereof or by the county auditor. ~~In either case, the~~ The notice of appeal ~~shall must be~~ served upon some member of the board by which the determination was made.

SECTION 70. AMENDMENT. Section 24-07-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-07-28. Judgment - Copy filed - Payment of costs. When judgment has been entered upon an appeal taken as provided in this chapter, ~~the county judge or~~ the clerk of the district court, ~~as the case may be,~~ shall file with



the county auditor or clerk of the township a certified copy of ~~such~~ the judgment.

SECTION 71. AMENDMENT. Subsections 2 and 7 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

2. "Court" means, except where otherwise indicated, the county district court of serving the county wherein the respondent resides.
7. "Magistrate" means the judge of the appropriate county district or juvenile court or a judge assigned by the presiding judge of the judicial district.

SECTION 72. AMENDMENT. Section 25-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-03. Jurisdiction. The county district courts have original jurisdiction over the proceedings governed by this chapter; ~~except as provided in this section. They have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation.~~

SECTION 73. AMENDMENT. Subsection 2 of section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the county district court of the a different county judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:
  - a. Continue the alternative treatment order;
  - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
  - c. Enter a new order directing that the individual be hospitalized until discharged from the hospital under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court may direct a peace officer to take the individual into protective custody and transport the respondent to a treatment facility.

SECTION 74. AMENDMENT. Section 25-03.1-38 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-38. Expenses of district court serving Stutsman County court. All expenses of the county district court of serving Stutsman County

involving patients in residence at the state hospital must be paid by the state hospital under the direction of the department.

SECTION 75. AMENDMENT. Section 25-03.1-46 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-46. Rules and regulations - Preparation of forms. The department shall, under chapter 28-32, adopt and enforce such rules as may be necessary for the implementation of this chapter. The supreme court, in consultation with the department, the associations of county district judges and state's attorneys, and other affected organizations, is responsible for the preparation and the department is responsible for distribution of the necessary and appropriate forms to enable compliance with this chapter.

SECTION 76. AMENDMENT. Subsection 3 of section 25-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The superintendent may authorize the temporary release of any resident to the custody of the resident's parent or guardian of the person, or to another person designated by the parent or such guardian. In the absence of such authorization any parent or guardian of the person of any resident may formally request, in writing, the resident's temporary release. The release must be granted at the earliest reasonable opportunity, but not more than thirty days after receipt of a written application. If a release is, or would be, effected contrary to the advice of the superintendent based on a recent comprehensive evaluation of the individual, the superintendent shall so advise the parent or such guardian in writing. If in the opinion of the superintendent the health, safety, welfare, or morals of the resident or society are seriously endangered by release, the superintendent shall so advise the department of human services, which may thereupon apply to the proper county district court to have ~~such~~ the adult resident adjudged a defective delinquent in the manner provided in section 25-04-07, or in the case of a minor, the department of human services may apply to the proper juvenile court to have ~~such~~ the minor declared a ward of the court.

SECTION 77. AMENDMENT. Subsections 2 and 3 of section 25-04-15 of the North Dakota Century Code are amended and reenacted as follows:

2. No real property belonging to the estate may be sold during the lifetime of the patient except for the maintenance and support of the patient's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the county district court having jurisdiction of the estate, with the consent of the department of human services.
3. No personal property belonging to the estate may be sold within five years from the date upon which the patient was sent to the developmental center unless the property is ordered sold by the county district court having jurisdiction of the estate for the reason that the property is likely to deteriorate in value during the time herein specified.

SECTION 78. AMENDMENT. Section 25-11-05 of the North Dakota Century Code is amended and reenacted as follows:

25-11-05. Transfer of patients - Approval of court. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to take no final action without approval of the county district court which committed ~~such~~ the patient, or if ~~such~~ the patient was not committed, then without approval of the county district court of serving Stutsman County.

SECTION 79. AMENDMENT. Section 27-01-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-01-01. Courts composing judicial system of state - Those constituting courts of record. The following are the courts of justice of this state:

1. The supreme court;
2. The district courts; and
3. ~~The county courts; and~~
4. Such other courts as are or may be created by law for cities.

Of these the supreme court and the district ~~and county~~ courts are courts of record.

SECTION 80. AMENDMENT. Section 27-01-01.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-01-01.1. Budgeting and financing of the supreme court and district courts. The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget must be delivered to the director of the budget pursuant to section 54-44.1-13. The budget for the district courts must include all salary and expenses for the district courts, including the juvenile courts, and their employees except the clerks of district courts and their deputies and employees, whose salaries and expenses must be paid by the counties unless the county has properly exercised its option pursuant to section 11-17-11. Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services ~~which that~~ are state funded pursuant to section 11-17-11. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until July 1, 1981, must continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. Any equipment and furnishings in the control and custody of a clerk of district court on the date of the exercise of the county option pursuant to section 11-17-11, and any such property acquired from that date until the beginning of the next state biennium, must continue in the district court's custody and control until the state court administrator determines such items are no longer needed by the judicial system. Upon that determination custody and control of the property must revert back to the county. **Each district court**

law library maintained by the state must be available for use by the county court in that county-

SECTION 81. AMENDMENT. Section 27-01-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-01-09. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders - Conditions. The district courts ~~and county courts~~ shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who is a graduate of an accredited law school and holds a current valid license to practice law in at least one state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order and personal jurisdiction over the parties to the action. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

SECTION 82. AMENDMENT. Subsections 1 and 3 of section 27-01-10 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The governing body of a county may, by resolution, authorize a ~~county district judge~~ the district judges serving that county to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.
3. The governing body of the county or city may determine the amount of the fee to be assessed in all cases or it may authorize the ~~county district~~ or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The county or municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a county or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body:
  - a. A private, nonprofit domestic violence or sexual assault program.

- b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

SECTION 83. AMENDMENT. Section 27-05-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-01. Judicial districts - Number of judges.

1. The judicial districts in this state are as designated by rule of the supreme court. The number of judges in each of the judicial districts is as follows:

- ~~1-~~ a. The northwest judicial district shall have five judges.
- ~~2-~~ b. The northeast judicial district shall have three judges.
- ~~3-~~ c. The northeast central judicial district shall have four judges.
- ~~4-~~ d. The east central judicial district shall have four judges.
- ~~5-~~ e. The southeast judicial district shall have three judges.
- ~~6-~~ f. The south central judicial district shall have five judges.
- ~~7-~~ g. The southwest judicial district shall have three judges.

2. Each judicial district has that number of additional judges as designated by rule of the supreme court pursuant to subsection 3 of section 1 of this Act. The supreme court shall reduce the number of district judges pursuant to section 86 to forty-two before January 2, 2001.

SECTION 84. AMENDMENT. Section 27-05-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-06. Jurisdiction of district courts. The district courts of this state have the general jurisdiction conferred upon them by the constitution, and in the exercise of such jurisdiction they have power to issue all writs, process, and commissions provided therein or by law or which may be necessary for the due execution of the powers with which they are vested. Such courts shall have:

1. Common-law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil actions and proceedings.
3. All the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carrying into effect their judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.

4. Jurisdiction of appeals from all final judgments of municipal judges and from the determinations of inferior officers, boards, or tribunals, in such cases and pursuant to such regulations as may be prescribed by law.
- 5- ~~Jurisdiction over actions by game and fish officials involving the confiscation of materials determined to be in excess of one thousand dollars in value.~~

SECTION 85. AMENDMENT. Subsection 1 of section 27-05-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The locations of the chambers of the district judges in each of the respective districts shall be as determined by rule of the supreme court. However, not more than seventy percent of the chambers of the district judges may be located in cities with a population of more than seven thousand five hundred.

SECTION 86. A new section to chapter 27-05 of the North Dakota Century Code is created and enacted as follows:

Vacancy in office of district judge - Abolition of offices - Hearing.

1. Notwithstanding section 44-02-03, when a vacancy occurs in the office of district court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the governor and in consultation with district court judges and attorneys in the affected judicial district, whether or not that office is necessary for effective judicial administration. The supreme court may, consistent with that determination, order that:
  - a. The vacancy be filled in the manner provided pursuant to chapter 27-25;
  - b. The vacant office be abolished; or
  - c. The vacant office be transferred to a judicial district in which an additional judge is necessary for effective judicial administration, and that the vacancy be filled in the manner provided pursuant to chapter 27-25 with respect to that judicial district.
2. Subject to subsection 3, the supreme court may, after consultation with district court judges and attorneys in the affected judicial district, abolish one or more offices of district court judge if the supreme court determines that the office is not necessary for effective judicial administration and abolition of the office is necessary to reduce the number of district court judges as required in subsection 2 of section 27-05-01. At least one year before the end of the term of office of a district court judge holding the judgeship, the supreme court shall notify the judges of the affected judicial district of a determination that the judgeship will be abolished. The abolition of an office of district court judge under this subsection is effective at the end of the term of office of the district court judge holding that judgeship. The district court judge holding the judgeship to be abolished may

petition the supreme court, within thirty days after receiving notice that the judgeship will be abolished, for a hearing on the determination. The supreme court shall hold the hearing within thirty days after receipt of the petition. Within thirty days after the hearing, the supreme court shall affirm, reverse, or modify its previous determination.

3. The authority conferred upon the supreme court in subsection 2 may be exercised:
  - a. From July 1, 1995, until June 30, 1997, if on July 1, 1995, the number of district court judges is more than forty-eight;
  - b. From July 1, 1997, until June 30, 1999, if on July 1, 1997, the number of district court judges is more than forty-six; and
  - c. From July 1, 1999, until December 31, 2000, if on July 1, 1999, the number of district court judges is more than forty-four.
4. The supreme court shall notify the governor of its determinations made pursuant to this section.

SECTION 87. A new section to chapter 27-05 of the North Dakota Century Code is created and enacted as follows:

Magistrates - Appointment - Salary - Authority. The presiding judge of a judicial district may appoint, subject to rules adopted by the supreme court, any qualified person, including a clerk of the district court, to serve as magistrate. A magistrate appointed pursuant to this section may be paid a salary as determined by the supreme court and has that authority performable by a district court judge as assigned by the presiding judge. The supreme court may adopt rules for the qualifications of magistrates, the extent and assignment of authority, and the conduct of the office, including rules relating to training sessions and continuing education.

SECTION 88. AMENDMENT. Section 27-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-06-01. District court reporter - Appointment, oath, substitutes, qualifications.

1. Each district judge shall appoint a qualified shorthand reporter to the office of court reporter. The provide for court reporter services, unless otherwise provided by rules of the supreme court, either by the appointment of a qualified shorthand reporter to the office of court reporter or by an electronic court reporting system.
2. If a reporter is appointed, the order of appointment must be filed in the office of the clerk and entered upon the records of the court in each county of the district. The person so appointed shall take and subscribe the oath required of other civil officers and shall file the same in the office of the secretary of state. The reporter shall hold office and discharge the duties thereof in person. If the reporter shall be incapacitated from acting, the judge may appoint some other qualified shorthand reporter to act, whose notes, transcripts, and certificates shall have the same

force and effect as though made by the official reporter, but the certificates made by the person must be under oath. A qualified shorthand reporter shall be a person who is the holder of a registered professional reporter certificate issued by the national shorthand reporters association or an official shorthand reporter appointed on or before July 1, 1979.

SECTION 89. AMENDMENT. Section 27-07.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-07.1-02. Multicounty agreements to share services of judges. The boards of county commissioners of any two or more counties may enter into an agreement to provide for the election of a single judge or any number of judges to serve the county courts of the several counties entering into the agreement. Any county entering into such an agreement shall retain its own county court which shall be located in the county seat and each action shall be venued in the county court of any county in which venue is proper under other provisions of law or rule of the supreme court. The agreement shall set forth the number of judges to be elected, the manner in which the salary and expenses of the judge or judges and any court reporters will be divided by the various counties, and the manner in which services will be provided to the various counties. Any such agreement must be entered into at least one hundred twenty days prior to the primary election in any year in which a general election is to be held, except a county in which no candidate is elected and qualified or in which a vacancy occurs may enter into an agreement with another county for the services of a judge at any time. Any agreement must remain effective for the duration of the term to which the county judge is to be elected, or, in the event of a vacancy which occurs after the agreement is entered into, until the vacancy is filled by election and the person elected takes office or the counties enter into an agreement for the provision of judicial services pursuant to subsection 4 of section 27-07.1-03. The candidates nominated or candidates elected as county judge shall be determined in both the primary and general elections by using the total combined votes in those counties which have entered into a multicounty agreement for judicial services. The candidate elected as judge of the county court in those counties which have agreed to share the services of a county judge is exempt from the requirement of section 11-10-04, but must be a resident of this state at the time of nomination. Any agreement or change to any agreement made under this section is subject to the prior approval of the supreme court.

SECTION 90. AMENDMENT. Section 27-07.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-07.1-03. Vacancies. ~~Any~~

1. Except as provided in subsection 2, any vacancy in the office of county judge shall be filled by the board of county commissioners pursuant to chapter 27-26, unless the board, by resolution, determines to fill the vacancy in accordance with section 44-02-04.
2. When a vacancy occurs in the office of county court judge, the supreme court shall determine, within ninety days of receiving notice of the vacancy from the board of county commissioners, whether or not that office is necessary for effective judicial administration. The supreme court's determination must be made in consultation with the board of county commissioners, judges, and



attorneys of each affected county. The supreme court may, consistent with its determination, order that:

- a. The vacancy be filled, at the discretion of the county, in either the manner provided pursuant to chapter 27-26 or through an agreement described in subdivision a or b of subsection 4; or
  - b. The vacant office be abolished and that county court services be provided pursuant to subsection 4.
3. The supreme court shall notify the board of county commissioners of each affected county of its determination made pursuant to subsection 2.
4. If the supreme court orders that a vacant office be abolished pursuant to subsection 2, the board of county commissioners of each affected county shall:
- a. Enter into an agreement with the supreme court for the provision of judicial services by the state judicial system until such time as the county courts are abolished and additional district court judgeships are established pursuant to section 1 of this Act; or
  - b. Enter into an agreement with a county that has an office of county court judge for the provision of county court services, notwithstanding the limitations imposed by section 27-07.1-02. Any county entering into such an agreement shall have a county court which must be located in the county seat and each action must be venued in the county in which venue is proper under other provisions of law or rule of the supreme court. The agreement must set forth the manner in which the salary and expenses of the judges and any court reporters will be divided by the counties, and the manner in which services will be provided to each county. The agreement may remain effective until such time as the county courts are abolished and additional district court judgeships are established pursuant to section 1 of this Act.

SECTION 91. AMENDMENT. Subsection 1 of section 27-08.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the county district courts ~~shall~~ may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of ~~said~~ that jurisdiction shall be known and referred to as the "small claims court". The jurisdiction of such court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed two thousand dollars.

SECTION 92. AMENDMENT. Section 27-08.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-06. Judgment unsatisfied - Docketing - Execution. If the defendant fails to pay the judgment rendered by the court within twenty days after notice of entry has been filed, the judge of the court may issue an execution to the county sheriff as if issued by the clerk of the county district court under chapter 28-21, and the execution invokes all the powers of the sheriff in the same manner as an execution of the judgment under chapter 28-21, or upon application of the prevailing party, the judge of the court shall certify an abstract of the judgment to the county district court, along with an affidavit of identity signed by the judgment creditor. The abstract may be filed with the clerk of the county district court of the county in which the judgment was rendered without payment of a filing fee, and the clerk shall enter the judgment upon the judgment docket. From the time of the docketing, it becomes a judgment of the county district court for the purpose of execution and a lien upon real property owned by the debtor in the same manner as an original judgment of the county district court. A certified transcript of the docket of the judgment may be filed and the judgment docketed accordingly in any other county with the same effect in every respect as if the judgment had been rendered in the county district court where the judgment is filed.

SECTION 93. AMENDMENT. Section 27-08.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-08. Referees of small claims court - Appointment - Term - Method of qualifying - Powers and duties - Compensation. The board of county commissioners presiding judge of the judicial district may authorize a judge of a county court to appoint a referee of the small claims court who shall hold office at the pleasure of the judge. The referee shall qualify in the same manner as other civil officers, except that the referee need not be a qualified elector of the county, and the duties and powers of the referee in the conduct of trials in the small claims court shall be ~~is~~ governed by the provisions of rule 53(c), North Dakota Rules of Civil Procedure, insofar as those provisions are not in conflict with the provisions of this chapter. The referee appointed must be a person versed in the law. The board of county commissioners presiding judge shall determine the salary or fee of the referee, within the limits of legislative appropriations.

SECTION 94. AMENDMENT. Section 27-09.1-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-14. Mileage and compensation of jurors. A juror shall ~~must~~ be paid mileage at the rate provided for state employees in section 54-06-09. A juror shall ~~must~~ be compensated at the rate of twenty-five dollars for each day of required attendance at sessions of the district or county court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors shall ~~must~~ be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall ~~must~~ be paid by the county.

SECTION 95. AMENDMENT. Subsection 1 of section 27-15-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the supreme court, and district courts, and county courts of the state.

SECTION 96. AMENDMENT. Section 27-15-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-15-02. Term of office - Vacancy, how filled. The judges of the supreme court, and district courts, ~~and county courts~~, the attorney general, the dean of the university of North Dakota school of law, and the surrogate judges shall hold office as members of the judicial conference during the time they occupy their respective official positions. The term of office of the two municipal judges is two years, except that of the municipal judges first appointed after July 1, 1985, one must be appointed for a term of one year. The term of office of the five members of the bar is five years, except that of the members of the bar first appointed after July 1, 1985, one must be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. All terms of members serving on July 1, 1985, expire on December 31, 1985. Thereafter all terms commence on January first. A vacancy ~~shall~~ must be filled by the authority originally selecting the member.

SECTION 97. AMENDMENT. Section 27-19-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-19-08. Limitations upon jurisdiction. Nothing in this section ~~shall authorize~~ authorizes the alienation, encumbrance, or taxation of any real or personal property belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or ~~shall authorize~~ authorizes regulation of the use of ~~such the~~ property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or ~~shall confer~~ confers jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein. The civil jurisdiction herein accepted and assumed ~~shall include but shall not be limited to~~ includes the determination of parentage of children, termination of parental rights, commitments by county district courts, guardianship, marriage contracts, and obligations for the support of spouse, children, or other dependents.

SECTION 98. AMENDMENT. Subsection 2 of section 27-20-47 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the child is not adopted within eighteen months after the date of the order and a guardian or conservator of the child has not been appointed by the county district court, the child ~~shall~~ must be returned to the court for entry of further orders for the care, custody, and control of the child.

SECTION 99. AMENDMENT. Subsection 2 of 27-23-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Judge" means a justice of the supreme court, a judge of the district court, ~~a judge of a county court~~, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.

SECTION 100. AMENDMENT. Section 27-23-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-23-02. Creation and composition of commission, terms of office, appointment, and powers. The commission on judicial conduct is hereby created to consist of ~~one judge~~ two judges of the district court, ~~one judge of the county court~~, ~~one lawyer who is licensed to practice law in this state~~, and four citizens who are not judges, retired judges, or lawyers. Members representing the district ~~and county courts court~~ shall be appointed by their ~~respective state associations association~~ and the lawyer member shall be appointed by the executive committee of the state bar association of North Dakota. The citizen members shall be appointed by the governor. The term of each member shall be three years. Initially, two members shall serve for three years, two members shall serve for two years, and three members shall serve for one year; as determined by lot. No member shall serve more than two full three-year terms. Membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after the vacancy occurs or the term of office ends shall be made by the supreme court. The commission shall select one of its members as chairman.

The commission has the power to investigate complaints against any judge in the state and to conduct hearings concerning the discipline, removal, or retirement of any judge.

SECTION 101. AMENDMENT. Section 27-24-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-24-04. Compensation and expenses of person appointed temporary judge — ~~Reimbursement to counties.~~

1. A temporary judge appointed as provided in section 27-24-01 must receive as compensation for each day of service in the performance of duties under the appointment an amount equal to five percent of the gross monthly salary of a regularly elected or appointed judge of the court in which the temporary judge is to serve, or one-half of that daily compensation for services of one-half day or less. The compensation must be paid upon the certificate of the temporary judge that the services were performed for the number of days shown in the certificate, and must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.
2. A temporary judge appointed as provided in section 27-24-01 or assigned as provided in section 27-24-02 to serve outside the county in which the judge resides or maintains an office must receive, in addition to daily compensation, reimbursement for travel expenses necessarily incurred in the performance of duties as temporary judge. The expenses must be reimbursed upon the certification by the temporary judge that the expenses were actually incurred, in the same manner as like expenses of regularly elected or appointed judges are paid.
- 3- ~~The state shall reimburse on a pro rata basis the county or counties for whom a county judge provides judicial services the salary paid to the judge by the county or counties during the~~

period the county judge serves as temporary judge in a district court following appointment under section 27-24-01-

SECTION 102. AMENDMENT. Section 28-20-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-20-22. Affidavit of renewal - Where filed - Entry. If the judgment was rendered in a district court of this state, ~~or was entered upon a transcript or abstract from a county court,~~ the affidavit for renewal must be filed with the clerk of the district court where the judgment was first docketed. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any district court where the same has been docketed. The clerk of the district court shall immediately enter in the judgment docket, after a statement of the original judgment, the fact of renewal, the date of renewal, and the amount for which the judgment is renewed. A copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of the district court where the judgment is filed, ~~may~~ must be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.

SECTION 103. AMENDMENT. Section 28-26-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-26-19. Taxing costs. In all actions, motions, and proceedings in the supreme, and district, ~~or county~~ courts, the costs of the parties ~~shall~~ must be taxed and entered on record separately.

SECTION 104. AMENDMENT. Section 28-29-04 of the North Dakota Century Code is amended and reenacted as follows:

28-29-04. Power of courts when prices are confiscatory. Until the price of farm products produced in this state ~~shall rise~~ rises to a point to equal at least the cost of production, in comparison with the price of other commodities in general, entering into the business of agriculture, the supreme court of this state and all district ~~and county~~ courts in this state ~~shall~~ have power, when it is deemed for the best interests of litigants, to extend the time for serving and filing all papers requisite and necessary for the final determination of any cause. Any such court, in like manner, may stay the entry of judgment or the issuance of execution thereon, or may defer the signing of any order for judgment, or may defer terms of court, whenever in the judgment of the court the strictly legal procedure in any cause will confiscate or tend to confiscate the property of any litigant by forcing the sale of agricultural products upon a ruinous market.

SECTION 105. AMENDMENT. Subsection 3 of section 29-01-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Trial may be had in municipal ~~or county~~ court.

SECTION 106. AMENDMENT. Subsection 4 of section 29-01-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Upon a judgment of a municipal court, or such other court as is or may be created by law for cities, ~~or a county court,~~ in a case in

which such judgment may be lawfully given without the intervention of a jury; or

**SECTION 107. AMENDMENT.** Subsection 3 of section 29-01-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. As limited by law directing the place of exercising their jurisdiction and authority, ~~county judges, or any qualified person magistrates~~ appointed by the ~~county~~ presiding judge pursuant to ~~section 27-07.1-07~~ of a judicial district, municipal judges, and small claims court referees who are licensed to practice law and authorized by the ~~county commissioners~~ presiding judge of the ~~judicial district~~ in case of an emergency, each with authority to act as magistrate throughout the county or the city for which ~~he~~ the magistrate is elected or appointed.

**SECTION 108. AMENDMENT.** Section 29-01-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-01-15. Jurisdiction of ~~municipal judges, and small claims court referees, and county courts.~~ Any municipal judge or judge of the county court mentioned in subsection 3 of section 29-01-14 may:

1. Act as committing magistrate; provided, that this subsection shall not apply to municipal judges who are not attorneys currently licensed under chapter 27-11.
2. Hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and this and other laws.
3. Adjudge and impose the punishment prescribed by law, upon conviction, in all cases within his jurisdiction to hear, try, and determine.
4. Grant temporary protection orders under the particular circumstances and for the limited duration set forth in section 14-07.1-08.

A small claims court referee authorized pursuant to subsection 3 of section 29-01-14 may act as a committing magistrate. ~~Any person~~ A magistrate appointed by the ~~county~~ presiding judge pursuant to ~~section 27-07.1-07~~ shall ~~have of the judicial district~~ has the authority to act to the extent allowed by rules promulgated by the supreme court.

**SECTION 109. AMENDMENT.** Section 29-02-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-02-13. Accused committed - How discharged - Undertaking transmitted to district court. If a person complained of for threatening to commit an offense against the person or property of another is committed for not giving security, ~~he that person,~~ upon giving the same, may be discharged by any municipal judge or judge of the county court of the county or political subdivision who is authorized to act as a committing magistrate, or by the judge of the district court of the county. Any undertaking so accepted must

be transmitted by the acting magistrate to the district court of the county for disposition at the next term.

SECTION 110. AMENDMENT. Section 29-07-01.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents. Lawyers appointed to represent needy persons shall be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court; by the state if the action is prosecuted in district court; and by the city wherein the alleged offense took place if the action is prosecuted in municipal court. ~~The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 9 of section 27-07-1-17.~~ The city shall also pay the expenses in any appeal taken to district court or county court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant with appointed counsel shall reimburse the county, state, or city such sums as the county, state, or city expends on the defendant's behalf, unless otherwise ordered by the court. The state's attorney of the county or prosecuting attorney of the city wherein the alleged offense took place shall seek civil recovery of any such sums any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the county, state, or city within six years of the date such amount was paid on that person's behalf. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds.

SECTION 111. AMENDMENT. Section 29-07-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-07-06. Change of place of hearing - Procedure. Whenever a person accused of a public offense is brought before a municipal judge for examination, and, at any time before such the examination is commenced, he the person files with such the municipal judge his an affidavit stating that by reason of the bias or prejudice of said the municipal judge he the person believes he cannot have a fair or impartial examination cannot be had before him the municipal judge, such the municipal judge must transfer said the action, and all the papers therein, including a certified copy of his the municipal judge's docket entries, to a county district judge for serving the same county. The state's attorney, or his assistant state's attorney, in the same manner and for the same reasons as the defendant, may obtain a transfer of such the action from the municipal judge before whom the action was commenced, or from the county district judge to whom it has been transferred on the application of the state, in which event it shall be transferred to the next nearest county another district judge designated by the presiding judge of the judicial district. The place of examination cannot be changed more than once by each party under this section.

SECTION 112. AMENDMENT. Section 29-10.1-38 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-10.1-38. Transcript demand - Waiver of transcript and preliminary examination, when. Within five days after his a first appearance before a magistrate, a the person against whom an indictment has been found and presented may make a written demand to the district judge for a copy of the transcript of the testimony given before the grand jury as it relates to him

that person and the charges against ~~him~~ that person. Upon receipt of such written demand, the judge shall issue an appropriate order. If the judge for any reason determines that a copy of a transcript of the testimony cannot be obtained, the person indicted shall be entitled, but not otherwise, to a preliminary examination, as provided by the statutes or rules of criminal procedure for persons otherwise charged with a crime. Under such conditions the preliminary examination shall be had before a judge of ~~a county the district court or a district judge, of~~ serving the county in which the crime was committed or is triable. Failure to make such demand within the time prescribed constitutes a waiver of the right to the transcript or to a preliminary examination.

SECTION 113. AMENDMENT. Subsection 1 of section 29-15-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of this section, any party to a civil or criminal action or proceeding pending in the district court ~~or any county court in this state~~ may obtain a change of the judge before whom the trial or any proceeding with respect thereto is to be heard by filing with the clerk of the court in which the action or proceeding is pending a written demand for change of judge, executed in triplicate either:
  - a. By the personal signature of the party, if an individual, and by personal signature of an authorized officer, if a corporation or association; or
  - b. By the attorney for a party with the permission of the party, in which event the attorney shall file with the demand a certificate that the attorney has mailed a copy of the demand to such party.

SECTION 114. AMENDMENT. Section 29-22-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29-22-02. Custody of jurors. The jurors shall retire in charge of one or more officers who must be sworn to keep them together in some private and convenient place until they have rendered their verdict. Such officer or officers shall furnish food and other necessities to the jurors, ~~at the expense of the county for county court and~~ at the expense of the state ~~for district court,~~ as directed by the court, and shall not speak to nor communicate with such jurors or any of them nor permit any other person so to do except by order of the court. Men and women jurors may retire, when rest or sleep or propriety requires it, to separate rooms.

SECTION 115. AMENDMENT. Subsection 6 of section 30.1-01-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Court" means the district court having jurisdiction in matters relating to the affairs of decedents; ~~This court in this state is known as the county court.~~

SECTION 116. AMENDMENT. Section 30.1-02-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:



## 30.1-02-02. (1-302) Subject matter jurisdiction.

- † The county district court has jurisdiction over all subject matter relating to guardianship, probate, and testamentary matters, including:
- a- 1. Estates of decedents, including construction of wills and determination of heirs and successors of decedents.
  - b- 2. Estates of protected persons.
  - c- 3. Protection of minors and incapacitated persons.
  - d- 4. Trusts, ~~to the extent necessary for the exercise of the court's jurisdiction over probate and testamentary matters.~~
- 2- The district and county courts have concurrent subject matter jurisdiction over trusts, except as provided in subdivision d of subsection 4. The district court has jurisdiction of all causes at law and equity not inconsistent with the exclusive original jurisdiction over probate and testamentary matters vested by subsection 4 in the county court.

SECTION 117. AMENDMENT. Section 30.1-02-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-02-07. (1-310) Oath or affirmation on filed documents. Except as otherwise specifically provided in this title or by rule, every document filed with the district or county court under this title, including applications, petitions, and demands for notice, ~~shall be~~ is deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.

SECTION 118. AMENDMENT. Subdivision c of subsection 2 of section 30.1-10-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. The renunciation ~~shall~~ must be filed in the county district court of serving the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation ~~shall~~ must be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the register of deeds of the county in which the real estate is situated.

SECTION 119. AMENDMENT. Section 30.1-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-32-01. (7-101) Duty to register trusts. The trustee of a trust having its principal place of administration in this state shall register the trust in a district or county court of this state in serving the county

encompassing the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

1. The usual place of business of the corporate trustee if there is but one corporate cotrustee; or
2. The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee; and otherwise
3. The usual place of business or residence of any of the cotrustees as agreed upon by them.

The duty to register under this chapter does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. The clerk of the district ~~or county~~ court shall keep a record of all trust registrations ~~in his county~~, and of any orders, or responses relating thereto, by the district ~~or county~~ court, and shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

SECTION 120. AMENDMENT. Section 30.1-32-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-32-03. (7-103) Effect of registration.

1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the district ~~or county~~ court in any proceeding under section 30.1-33-01 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding ~~shall~~ must be delivered to the trustee, or mailed to ~~him~~ the trustee by ordinary first-class mail, at ~~his~~ the trustee's address as listed in the registration or as thereafter reported to the district ~~or county~~ court and to ~~his~~ the trustee's address as then known to the petitioner.
2. To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the district ~~or county~~ court of registration for the purposes of proceedings under section 30.1-33-01, provided notice is given pursuant to section 30.1-03-01.

SECTION 121. AMENDMENT. Section 30.1-32-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-32-04. (7-104) Effect of failure to register. A trustee who fails to register a trust in a proper place as required by this chapter, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any district ~~or county~~ court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a

settlor or beneficiary of the trust, fails to register a trust as required by this chapter is subject to removal and denial of compensation or to surcharge as the district ~~or county~~ court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee ~~shall~~ is not ~~be~~ subject to the jurisdiction of the district ~~or county~~ court, is ineffective.

SECTION 122. AMENDMENT. Section 30.1-33-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-33-01. (7-201) District ~~and county courts concurrent court~~ jurisdiction of trusts.

1. The district ~~and county~~ courts have ~~concurrent~~ jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trust, ~~except for the proceedings over which the county court has exclusive jurisdiction as provided in section 30.1-02-02. These include, but are not limited to,~~ proceedings to:
  - a. Appoint or remove a trustee.
  - b. Review trustees' fees and to review and settle interim or final accounts.
  - c. Ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right.
  - d. Release registration of a trust.
2. Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the district ~~or county~~ court invoked by interested parties or as otherwise exercised as provided by law.

SECTION 123. AMENDMENT. Section 30.1-33-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-33-03. (7-203) Trust proceedings - Dismissal of matters relating to foreign trusts. The district ~~or county~~ court will not, over the objection of a party, entertain proceedings under section 30.1-33-01 involving a trust registered or having its principal place of administration in another state, unless:

1. All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or
2. The interests of justice otherwise would seriously be impaired.

The district ~~or county~~ court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the district ~~or county~~ court may grant a continuance or enter any other appropriate order.

SECTION 124. AMENDMENT. Section 30.1-33-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-33-04. (7-204) District ~~and county~~ court —~~Concurrent~~ jurisdiction of litigation involving trusts and third parties. The district ~~or county~~ court of the place in which the trust is registered has concurrent jurisdiction with other district ~~or county~~ courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

SECTION 125. AMENDMENT. Section 30.1-33-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-33-05. (7-205) Proceedings for review of employment of agents and review of compensation of trustee and employees of trust. On petition of an interested person, after notice to all interested persons, the district ~~or county~~ court may review the propriety of employment of any person by a trustee, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

SECTION 126. AMENDMENT. Section 30.1-33-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-33-06. (7-206) Trust proceedings - Initiation by notice - Necessary parties. Proceedings under section 30.1-33-01 are initiated by filing a petition in the district ~~or county~~ court and giving notice pursuant to section 30.1-03-01 to interested parties. The district ~~or county~~ court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

SECTION 127. AMENDMENT. Subsection 1 of section 30.1-34-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Within thirty days after ~~his~~ the trustee's acceptance of the trust, the trustee shall inform, in writing, the current beneficiaries and if possible, one or more persons who under section 30.1-03-03 may represent beneficiaries with future interests, of the district ~~or~~

county court in which the trust is registered and of his the trustee's name and address.

SECTION 128. AMENDMENT. Section 30.1-34-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-34-04. (7-304) Duty to provide bond. A trustee shall provide bond to secure performance of his the trustee's duties unless the terms of the trust expressly excuse the trustee from furnishing bond. On petition of the trustee or other interested person, the district or county court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it ~~shall~~ must be filed in the court of registration or other appropriate court in amounts and with the sureties and liabilities as provided in sections 30.1-17-04 and 30.1-17-06 relating to bonds of personal representatives.

SECTION 129. AMENDMENT. Section 30.1-34-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-34-05. (7-305) Trustee's duties - Appropriate place of administration - Deviation. A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the district or county court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries ~~shall~~ must be given weight in determining the suitability of the trustee and the place of administration.

SECTION 130. AMENDMENT. Section 31-01-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

31-01-16. Compensation and mileage and travel expense of witness - County to pay fees except for district court fees in criminal action. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district or county court or before any other ~~court,~~ board, or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases such, witness fees and expenses on the part of the state must be paid out of the county treasury of the proper county except that in district court cases the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses. Prisoners may not be compensated as witnesses under this section.

SECTION 131. AMENDMENT. Section 31-01-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

31-01-18. Expenses of witness paid by city, ~~county,~~ or state upon court order in criminal or municipal court action. When a person, as a witness in a criminal or municipal court action, appears before a magistrate, grand jury, or court, upon a subpoena or in pursuance of an undertaking and it appears that the person:

1. Has come from a place outside the county; or
2. Is poor and unable to pay the expenses of such attendance,

the court, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, by a written order, may direct the state in district court cases, ~~the county in county court cases,~~ or the city in municipal court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of the witness's attendance. Upon the production of the order or a certified copy thereof, the state, ~~county,~~ or city, to whichever entity the order is directed, must pay the witness the sum specified. In district court cases, the attorney general shall pay prosecution witness expenses and the supreme court shall pay other witness expenses.

SECTION 132. AMENDMENT. Section 32-19-23 of the North Dakota Century Code is amended and reenacted as follows:

32-19-23. When notice not required. If the record title to real estate is in the name of a deceased person, no notice before foreclosure need be served unless an administrator or executor of the estate of ~~such the~~ deceased person has been appointed by the ~~county~~ district court of ~~of serving~~ the county in which ~~such the~~ real estate is situated. The certificate of the judge or clerk of the ~~county~~ district court of ~~of serving~~ the county in which the real estate is situated stating that no such administrator or executor has been appointed in that county may be recorded in the office of the register of deeds and ~~shall be~~ is sufficient evidence of that fact.

SECTION 133. AMENDMENT. Section 32-19-24 of the North Dakota Century Code is amended and reenacted as follows:

32-19-24. Service of notice on administrator or executor. If an administrator or executor of the estate of the deceased owner has been appointed in the county where the real estate is situated, the notice before foreclosure ~~shall~~ must be served upon ~~him~~ the administrator or executor. Service may be made by registered or certified mail addressed to ~~him at his~~ the administrator's or executor's post-office address as shown by the records of the ~~county~~ district court by which ~~he~~ the administrator or executor was appointed.

SECTION 134. AMENDMENT. Section 32-19-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-30. Service by publication - How made. Service of the summons may be made by publication if the plaintiff files a verified complaint in the office of the clerk of the district court of the county where the action is commenced, setting forth a claim for relief in favor of the plaintiff and against the defendants, for the foreclosure of a mortgage or other lien upon

real estate, and when the plaintiff files in said that office an affidavit signed by the plaintiff or ~~his~~ the plaintiff's attorney substantially in the following form:

STATE OF NORTH DAKOTA            )  
  ) ss.  
County of ----- )

----- being first duly sworn upon oath deposes and says that he is the (attorney for) ----- plaintiff in the above entitled action:

Affiant further says that the defendants (naming them) ----- appear to have an interest in or lien or encumbrance upon the real estate described in the complaint in this action, that such interest or lien is subject and inferior to the lien of the plaintiff being foreclosed; that plaintiff seeks no personal judgment against the defendants, if any, (naming them) ----- and seeks only to bar and exclude said the defendants from any interest in or lien or encumbrance upon the real estate described in the complaint, save and except the right of redemption as provided by law; that the residences of the defendants, if any, (naming them) ----- are not shown upon the records of the office of the register of deeds, county auditor, or clerk of the district court of ----- County, that being the county in which the real estate involved in this action is situated; that the residences of the defendants, if any, (naming them) ----- are as follows: -----; that affiant does not know the residences of the defendants, if any, (naming them) -----; that the defendants, if any, (naming them) ----- are deceased, and it does not appear by the records in the office of the judge of the county district court in and for serving ----- County, that being the county in which the real estate described in the complaint in the action is situated, that any administration upon the estate of said defendant is now pending; and that the defendants, if any, (naming them) ----- are deceased, and that ----- of ----- is the duly appointed, qualified, and acting administrator or executor, as the case may be, of the estate of said the deceased.

SECTION 135. AMENDMENT. Section 32-22-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-22-18. Informal commitment from county district judge. If the person is committed to prison, or is in custody of an officer on a criminal charge, by virtue of a warrant of commitment of a county district judge, such the person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

SECTION 136. AMENDMENT. Section 32-24-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-24-01. When question may be certified. Where any cause is at issue, civil or criminal, in any district court or county court in this state and the issue of the same will depend principally or wholly on the construction of the law applicable thereto, and such construction or interpretation is in doubt and vital, or of great moment in the cause, the

judge of any such court, on the application of the attorney for the plaintiff or defendant in a civil cause, and upon the application of the attorneys for the plaintiff and defendant in a criminal cause, may halt all proceedings until such the question shall have been certified to and determined by the supreme court and by it determined.

SECTION 137. AMENDMENT. Section 33-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

33-06-01. When eviction maintainable. An action of eviction to recover the possession of real estate is maintainable in the proper county district court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.
4. A lessee, in person or by subtenant, holds over after the termination of his the lease or expiration of his the lessee's term, or fails to pay his rent for three days after the same shall be rent is due.
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity therein.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a county district court.

SECTION 138. AMENDMENT. Section 33-06-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

33-06-03. Legal representatives may bring eviction actions. Executors and administrators may bring actions of eviction in the county district courts in the same manner as their testators and intestates, as the case may be.

SECTION 139. AMENDMENT. Section 33-06-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

33-06-04. Eviction actions not joinable with other actions - Exception - When counterclaims only interposable. An action of eviction cannot be brought in a county district court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the



defendant's possession. No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits.

**SECTION 140. AMENDMENT.** Section 36-01-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**36-01-18. Inspection of livestock in transit - Penalty.** The state veterinarian and authorized agents and representatives of the state board of animal health, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by the state veterinarian or an authorized agent or representative of the board to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed is a class A misdemeanor. The inspector is authorized to use a stop signal.

The state board of animal health, the state veterinarian, or any authorized agent or representative of the board, may call any sheriff or deputy sheriff, police officer, or highway patrol officer, to execute its orders, and those officers must obey. Any law enforcement officer may arrest and take before any county district judge of serving the county any person found violating any of the provisions of this chapter. The law enforcement officer shall immediately notify the state's attorney of the county of the arrest, and the state's attorney shall prosecute the person found violating any provision of this chapter.

**SECTION 141. AMENDMENT.** Section 36-11-10 of the North Dakota Century Code is amended and reenacted as follows:

**36-11-10. Trespassing animals may be distrained - Notice to owner - Security for release.** The person suffering damages by reason of the trespass of any livestock may take up the offending animal or animals. He The person suffering damages shall notify the owner, or the person in possession of the livestock at the time of the trespass, of the seizure of such animal or animals without unnecessary delay, if the owner or person in possession is known to him the person suffering damages and is a resident of, and present within, the county in which the trespass occurred. He The person suffering damages may retain such animal or animals in his that person's custody until:

1. The damages sustained by reason of such trespass and the costs in the action to recover such damages have been paid; or
2. Good and sufficient security for the payment of such the damages and costs is given, such security to be approved by a county district judge of serving the county in which the livestock is taken up.

If the owner of the offending animal or animals elects to give security, he the owner shall give to the person holding the livestock notice that security will be given and the date and hour when such security will be submitted to the county district judge for approval. Such The notice must be given at least one day prior to the date set for the submission of the security to the judge. The cost of serving notices required under this section may be taxed as costs in the action. Where applicable, the provisions of section 36-11-07 may be raised as an affirmative defense in any proceedings under this

section, and the owner or person entitled to possession of such livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court finds that such the livestock have been wrongfully distrained, the person who causes such the livestock to be wrongfully distrained is liable for all damages suffered by the owner or person entitled to possession of such the livestock, together with the costs of the action and reasonable attorney's fees.

SECTION 142. AMENDMENT. Section 36-11-11 of the North Dakota Century Code is amended and reenacted as follows:

36-11-11. Procedure when security given. When security for the payment of damages and costs is approved by the county district judge, the judge shall issue an order directed to the person holding the livestock to deliver such the stock to the person entitled thereto, and the officer receiving such the order shall take such the livestock and deliver the same it to such the person. The cost of the proceedings may be charged as a part of the costs in the action to determine the rights of the parties regarding the livestock distrained for the trespass.

SECTION 143. AMENDMENT. Section 37-15-18 of the North Dakota Century Code is amended and reenacted as follows:

37-15-18. Commandant as administrator - Bond not required - Fees - Allowance of fees by county district court. Upon becoming administrator of any estate as provided in section 37-15-17, the commandant is not required to give bond, and ~~he~~ is not entitled to charge or receive any compensation for ~~his~~ the commandant's services as administrator. The county district court of servicing the county where the administration proceedings are had shall not make nor allow any charge or fee in connection with the administration proceedings other than the actual disbursements of the administrator.

SECTION 144. AMENDMENT. Section 37-16-04 of the North Dakota Century Code is amended and reenacted as follows:

37-16-04. Officers of political subdivisions to furnish data to adjutant general upon request. Upon the request of the adjutant general, the executive officer of each city, the supervisors of each township, and ~~the~~ county a district judge of servicing each county in this state shall furnish data to the adjutant general relative to unmarked graves of soldiers, sailors, and marines by giving a list of the sites of such unmarked graves in their respective subdivisions.

SECTION 145. AMENDMENT. Subsection 1 of section 38-10-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "County District court" means the county district court having jurisdiction of the estate of which the personal representative involved is administrator, executor, or guardian, as the case may be.

SECTION 146. AMENDMENT. Section 38-10-03 of the North Dakota Century Code is amended and reenacted as follows:

38-10-03. Term of lease for production - Conditions and limitations in lease. A lease for production made by a personal representative may be made subject to the confirmation of the county district court, for a period of not

more than ten years, and it may be extended thereafter as long as oil or gas is produced from such land by the lessee or ~~his~~ the lessee's assigns or the lessee or ~~his~~ the lessee's assigns is engaged in continuous drilling or reworking operations. Such a lease must be made upon such terms and in consideration of such bonuses, royalties, rentals, and payments as may be agreed upon except that in no case may the royalty be:

1. Less than equal to a one-eighth part of all oil produced and saved from the leased premises;
2. Less than equal to a one-eighth part of the gross proceeds at the prevailing market rate at the well for all gas used off the premises, when gas only is found on the leased premises; nor
3. Less than one-eighth of the gross proceeds at the prevailing market rate at the well for gas, during all times that such gas is used, when gas is produced from any oil well and used off the premises or for the manufacture of casinghead gasoline or dry commercial gas.

No lease for production is effective for a period of more than two years from its date unless mining or a well is commenced on such land within such time, except that the lease may provide that the lessee may pay a delay rental in an amount that may be specified in the lease. Such payment operates as a rental and covers the privilege of deferring the commencement of mining or of a well for one year. A lease may provide for the payment of successive delay rentals which defers the commencement of mining or of a well for like successive periods. Any lease made by a personal representative under the authority of this section may provide for the pooling or unitization of the lease land, or any part or parts thereof, and of any mineral or royalty interest therein, with land adjoining or in the vicinity of the leased land, or any mineral or royalty interest therein, so as to form a unit for development and purpose of operation. Operations or production on any such unitized area shall have the same effect as operations or production on the leased land. The lease may provide for payment of a proportionate part of the royalties on production from any such unitized area to the personal representative in lieu of the royalties provided in the lease as to the area so unitized. A personal representative, upon compliance with the provisions of this chapter, may also enter into agreements pooling or unitizing existing leases. Upon the execution, approval, and delivery of a production lease, all persons interested in the estate are bound thereby during the entire period thereof.

SECTION 147. AMENDMENT. Section 38-10-05 of the North Dakota Century Code is amended and reenacted as follows:

38-10-05. Personal representative may sell mineral, oil, and gas rights separately from surface rights. Whenever it appears to the satisfaction of the county district court that it is necessary for the payment of the family allowance or of claims, expenses of administration, or legacies, or that it is for the advantage, benefit, or best interests of the estate of a decedent, minor, or incompetent, and of the persons interested therein, that the whole or some undivided fractional part of the oil, gas, or other minerals in or under, or that may be produced from, land belonging to the estate should be sold separately from the surface rights, the personal representative may sell the same, upon order of the county district court.

SECTION 148. AMENDMENT. Section 38-10-06 of the North Dakota Century Code is amended and reenacted as follows:

38-10-06. Petition required to obtain order of license - Contents of petition - Citation issued on petition. To obtain an order of the county district court for the sale of oil, gas, or other mineral rights, a verified petition must be presented to and filed with the court setting forth the matters required by law to be contained in a petition for the sale of real estate and in addition thereto setting forth the quantity of the interest in the oil, gas, or other minerals desired to be sold and the probable amount to be realized on the sale thereof. A citation must be issued on the petition and served in the manner provided by this code law for the service of citations in county district court. If all persons interested in the estate join in the petition or signify in writing their assent thereto or waive service of notice thereof, the hearing may be had at any time.

SECTION 149. AMENDMENT. Section 38-10-08 of the North Dakota Century Code is amended and reenacted as follows:

38-10-08. Order of license to sell oil, gas, or mineral rights and procedure thereafter. If it appears to the county district court, after the hearing provided for in this chapter, that it is necessary, or for the advantage, benefit, and best interests of the estate and of the persons interested therein, to sell the whole or some fractional part of the oil, gas, or minerals in and under, and that may be produced from, land belonging to the estate, the court may enter its order of license authorizing the sale of the whole or any fractional part thereof separately from the surface rights. Thereafter, further proceedings must be had and conducted in compliance with the provisions of sections 30.1-13-04, 30.1-18-03, 30.1-18-04, 30.1-18-11, 30.1-18-15, and 30.1-19-08.

SECTION 150. AMENDMENT. Section 39-06-16 of the North Dakota Century Code is amended and reenacted as follows:

39-06-16. License to be carried and exhibited on demand. Every licensee shall have his the licensee's operator's license or permit in his the licensee's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of any district court, municipal court, county court, a patrolman, peace officer, or a field deputy or inspector of the highway department. However, no person charged with violating this section may be convicted or assessed any court costs if he the person produces in court, to the chief of police or in the office of the arresting officer an operator's license or permit theretofore issued to him that person and valid and not under suspension, revocation, or cancellation at the time of his the person's arrest.

SECTION 151. AMENDMENT. Subdivision a of subsection 5 and subsection 7 of section 39-06.1-03 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. a. If a person is aggrieved by a finding that he the person committed the violation, he the person may, without payment of a filing fee, appeal that finding to the district court or county court for trial anew. If, after trial in the appellate court, the person is again found to have committed the violation, there may be no further appeal. Notice of appeal under this subsection must be given within thirty days after a

finding of commission of a violation is entered by the official. Oral notice of appeal may be given to the official at the time that the official adjudges that a violation has been committed. Otherwise, notice of appeal must be in writing and filed with the official, and a copy of the notice must be served upon the prosecuting attorney. An appeal taken under this subsection may not operate to stay the reporting requirement of subsection 4, nor to stay appropriate action by the licensing authority upon receipt of that report.

7. As used in sections 39-06.1-02, 39-06.1-03, and 39-06.1-04, the word "official" means a district judge, a judge of a county court, a municipal judge, or, when provided by statute, a person appointed by a district judge to serve as such official for all or a specified part of a judicial district.

SECTION 152. AMENDMENT. Section 40-02-16 of the North Dakota Century Code is amended and reenacted as follows:

40-02-16. Arbitration of differences between township and newly organized municipality upon division of property and indebtedness. If the officers of a township and of a municipality which has been organized from territory situated therein cannot agree upon the valuation of any real estate, or of any indivisible property which is held jointly, or upon the just apportionment of the joint indebtedness, the officers of the township or municipality, upon five days' notice of the time and place, may apply to the county judge district court serving the county in which the township or municipality is located for arbitration of such differences. Thereupon, the county district judge shall appoint three freeholders of the county, not residents or taxpayers of the municipality or township involved, to act as arbitrators. After being duly sworn to perform the duties imposed upon them, the arbitrators shall view and appraise the property and fix the valuation thereof for the purpose of making the division. If the property to be divided is personal property and no satisfactory arrangement can be made otherwise, it ~~shall~~ must be sold at public auction to the highest bidder, and the municipality and township may bid at ~~such~~ the sale.

SECTION 153. AMENDMENT. Section 40-09-16 of the North Dakota Century Code is amended and reenacted as follows:

40-09-16. Board may summon and compel attendance of witnesses and books - Punish for contempt - Process. Whenever it is necessary for the more effective discharge of its duties, the board of city commissioners may summon and compel the attendance of witnesses and the production of books and papers before it. The board may punish for contempt of the board with the same fines and penalties as the county a district judge may inflict for contempt of the county district court. All process necessary to enforce the powers conferred by this section ~~shall~~ must be signed by the president of the board, attested by the city auditor, and served by any member of the police force of the city.

SECTION 154. AMENDMENT. Section 40-11-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-11-13. Fines and forfeitures for violation of ordinances paid into treasury. All fines, penalties, and forfeitures collected for offenses against the ordinances of a city, including those fines, penalties, and

forfeitures collected as a result of a judgment of a county district court rendered pursuant to section 40-18-19, ~~shall~~ must be paid into the city's treasury at such time and in such manner as may be prescribed by ordinance.

SECTION 155. AMENDMENT. Subsections 1 and 3 of section 40-18-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The municipal judge within a city having a population of five thousand or more must be licensed to practice law in this state, unless no person so licensed is available in the city. In a city with a population of less than five thousand, the municipal judge need not be licensed to practice law in this state, nor may the judge be required to be a resident of the city. ~~The offices of municipal judge and county judge may not be held by the same person, except pursuant to assignment of the presiding judge of the judicial district.~~ The municipal judge has jurisdiction to hear, try, and determine offenses against the ordinances of the city.
3. Notwithstanding any other provision of law, the municipal court has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the person charged with the offense has twice previously been convicted of violation of section 39-08-01 or equivalent ordinance within the five years preceding the commission of the offense charged or if the person charged with the offense has three times previously been convicted of violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of violation of section 39-08-01 or equivalent ordinance twice within the five years, or three times within the seven years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the person in the county district court.

SECTION 156. AMENDMENT. Section 40-18-06.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-06.2. Transfer of municipal ordinance cases to county court - Abolition of office of municipal judge. With the agreement of the governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the county court of the county in which the city is located. These cases are deemed county court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the county, may abolish, by resolution, the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the date the governing body of the city abolishes the office of municipal judge.

SECTION 157. AMENDMENT. Section 40-18-06.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-06.2. Transfer of municipal ordinance cases to county district court - Abolition of office of municipal judge. With the agreement of the

governing body of the county, or the counties of the multicounty agreement area pursuant to section 27-07.1-02 the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the county district court of serving the county in which the city is located. These cases are deemed county district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish, by resolution, the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the date the governing body of the city abolishes the office of municipal judge.

SECTION 158. AMENDMENT. Section 40-18-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-15. Trials in nonjury cases arising under the ordinances of a city. An action for the violation of a city ordinance for which the right to a jury trial does not otherwise exist or in which the defendant has timely and appropriately waived a right to a jury trial in writing pursuant to rules of the supreme court, may be tried and determined by the municipal judge without the intervention of a jury. In the event of an adverse verdict in a municipal court trial, a defendant may appeal as provided in section 40-18-19, but a waiver of jury trial in the municipal court proceeding also constitutes a waiver of jury trial in the county district court.

SECTION 159. AMENDMENT. Section 40-18-15.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-15.1. Transfer to county district court if jury trial not waived - Expenses of prosecution - Division of funds between city and county, and state. If within twenty-eight days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county district court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county, state, or any individual or entity for prosecution or defense services. In the contract, the city and the county, and state may agree by resolutions of the respective governing bodies, to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. ~~The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city, which must be paid to the city and county treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter.~~ At the time of payment, the county district court shall account under oath to the city auditor and county for all money collected.

SECTION 160. AMENDMENT. Section 40-18-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-19. Appeals from determinations of municipal judge. An appeal may be taken to the county district court from a judgment of conviction or order deferring imposition of sentence in a municipal court in accordance with the North Dakota Rules of Criminal Procedure. An appeal is perfected by notice of appeal. A perfected appeal to the county district court transfers the action to such county district court for trial anew. On all appeals from a determination in a municipal court, the appellate district court shall take

judicial notice of all of the ordinances of the city. No filing fee may be required in ~~county~~ district court for the filing of an appeal from a judgment of conviction for the violation of a municipal ordinance. Expenses necessary for the adequate defense of a needy person in an appeal to district ~~or county~~ court from a judgment of conviction for the violation of a municipal ordinance, as approved by the presiding district ~~or county~~ judge, must be paid by the city wherein the alleged offense took place.

SECTION 161. AMENDMENT. Section 40-18-20 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-20. Demand for change of judge. Any party to a proceeding pending in any municipal court may obtain a change of judge pursuant to section 29-15-21, except that either a district judge, ~~a county judge pursuant to section 40-18-01,~~ or a municipal judge may be appointed to act in place of the disqualified judge. The alternate municipal judge, if any, is automatically appointed to preside in the case.

SECTION 162. AMENDMENT. Subsection 3 of section 42-01-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Bringing a criminal action before a ~~county~~ district judge, ~~who shall have authority to bind the defendant over to the district court;~~

SECTION 163. AMENDMENT. Subsection 2 of section 43-23-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in ~~county~~ district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.

SECTION 164. AMENDMENT. Section 44-02-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-02-04. Vacancy in county office - Appointment. A vacancy in any county office, other than that of county commissioner, must be filled by the board of county commissioners, with the exception that if a vacancy has occurred in the office of state's attorney by reason of ~~his~~ removal under section 44-11-01, the appointment must be made by the board of county commissioners by and with the advice and consent of the governor. ~~A vacancy in the office of county judge must be filled as provided in chapter 27-26.~~ The board of county commissioners may declare a county office to be vacant whenever the officeholder is unable to perform the duties of the office for six months or more. However, if within one year the officeholder should become able to perform ~~his the officeholder's~~ duties the county commissioners may, for good cause shown, reinstate ~~such the~~ officeholder.

SECTION 165. AMENDMENT. Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

44-02-05. Vacancy in board of county commissioners - How filled. When a vacancy occurs in the board of county commissioners, the remaining members



of the board, with the county district judge serving the county and auditor, immediately shall appoint some suitable person to fill such the vacancy from the district in which such the vacancy occurred. If a majority of such the officers fails to agree upon a person to fill such the vacancy, the county treasurer shall be called in and shall act as an additional member of such the board to fill the vacancy. The appointee ~~shall hold~~ holds office until his the appointee's successor is elected at the next general election and qualified.

SECTION 166. AMENDMENT. Section 44-03-02 of the North Dakota Century Code is amended and reenacted as follows:

44-03-02. Persons ineligible as deputy. No state officer can appoint as ~~his~~ deputy any other state or district officer. A state treasurer may not appoint as ~~his~~ deputy any county treasurer, ~~county judge~~, register of deeds, sheriff, or county commissioner.

SECTION 167. AMENDMENT. Subsection 2 of section 44-05-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Judge of the county court~~, The clerk of the district court, clerk of the county court, county auditor, register of deeds, and the deputy of each such officer within that officer's county.

SECTION 168. AMENDMENT. Section 44-08-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-09. Fees paid in advance or security given. The clerk of the supreme court, the clerk of each district court, ~~the county judge~~, sheriff, or register of deeds, in all cases, may require the party for whom any service is to be rendered to pay the fees in advance of service, or to give security for the costs of service, to be approved by the officer.

SECTION 169. AMENDMENT. Section 44-09-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-09-01. Impeachments - Reasons - Officers subject. The governor and other state and judicial officers of the state, except ~~county judges and~~ municipal judges, ~~shall be are~~ subject to impeachment, and may be impeached for habitual drunkenness, crimes, corrupt conduct, malfeasance, or misdemeanor in office. The articles of impeachment may contain charges and specifications, or either, predicated upon or on account of any crime, corrupt conduct, malfeasance, or misdemeanor in office committed by the accused during any previous term of the same office.

SECTION 170. AMENDMENT. Section 44-11-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-11-12. Powers of commissioner - Subpoenas - Service - Fees. After taking and filing the oath of office, the commissioner has authority to issue subpoenas for persons and subpoenas duces tecum and to administer oaths to witnesses the same as is conferred upon county district judges. The subpoenas may be directed to any sheriff, or chief of police, who immediately shall serve the subpoenas. The officer is entitled to such fees as are allowed to sheriffs for serving subpoenas in county district court. The fees must be paid in the same manner as is provided in this chapter for witness

fees and commissioner's fees. The commissioner has the same powers as are conferred upon district judges to take testimony and ~~shall~~ may rule on, admit, or exclude testimony accordingly. The commissioner may punish for contempt in the same manner as the district court.

SECTION 171. AMENDMENT. Section 46-04-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-04-05. Distribution of session laws, compilations, and codifications to county officers. The board of county commissioners of each county, immediately after the publication of any session laws, codes, or compilations, shall cause a copy thereof to be furnished to the following county officers:

1. Auditor.
2. State's attorney.
3. Clerk of court.
4. Sheriff.
5. ~~County judge.~~

If any of ~~such the~~ such the offices legally have been combined in ~~such the~~ such the county, only one copy of the session laws, codes, or compilations need be furnished for the offices so combined.

Provided, however, that such codifications and copies of the session laws ~~shall~~ remain the permanent property of the county.

SECTION 172. AMENDMENT. Section 47-03-06 of the North Dakota Century Code is amended and reenacted as follows:

47-03-06. Allowance to minor from accumulations. When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the county district court, upon application, may direct a suitable sum to be applied thereto out of the fund.

SECTION 173. AMENDMENT. Section 47-18-22 of the North Dakota Century Code is amended and reenacted as follows:

47-18-22. Conveyance in case of mental illness. If either the husband or wife of the owner of a homestead ~~shall become~~ becomes mentally ill, the county district court of serving the county in which the homestead is situated may make an order, upon application of ~~such the~~ such the owner, or if ~~said the~~ said the owner is deceased, the administrator or executor or legal representative of ~~said the~~ said the owner, and upon due proof of such mental illness, permitting the owner, or if ~~said the~~ said the owner is deceased, the administrator or executor or legal representative of ~~said the~~ said the owner, to sell and convey or mortgage the homestead.

SECTION 174. AMENDMENT. Subsection 9 of section 47-19-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. A certified copy of an order of a county district court relating to estate tax determinations.

SECTION 175. AMENDMENT. Section 47-19-06 of the North Dakota Century Code is amended and reenacted as follows:

47-19-06. Death certificates - Joint tenant - Estate tax determination - Prima facie evidence of termination of estate held. In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which such estate, title, interest, or lien was created, a copy of the record of the death of any such joint tenant or of the person upon whose life such estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which such record is made, to keep a record of the death of persons occurring within the jurisdiction of such officer, may be recorded in the office of the register of deeds of the county in which such the lands are situated if, in cases where said the decedent had an estate, title, or interest in, or lien upon, said the lands, there has been recorded a certified copy of an order of a county district court or a statement of the state tax commissioner relating to estate tax determination of said the decedent's estate. Such The certified copy of death certificate, or such a record thereof in said the office, or a duly certified copy of such the last mentioned record, shall be is prima facie evidence of the death of such person and the termination of such the joint tenancy and of all such estate, title, interest, and lien as was or is limited upon the life of such the person.

SECTION 176. AMENDMENT. Subsection 5 of section 47-24.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Court" means the county district court.

SECTION 177. AMENDMENT. Subsection 2 of section 50-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The governing board of a multicounty welfare district shall consist consists of seven, nine, or eleven members, as determined by the plan. The plan must provide that there must be appointed as members to such the board from each respective county, the number of members in the ratio that each county's population bears to the total population of the multicounty welfare district; provided, that each county to be included in such the district must be represented by at least one board member. Appointments must be made by committees created in each county included in the district, and composed of the chairman of the board of county commissioners, the county a district judge serving the county, and the state's attorney of each such county acting with the advice and consent of the state department. Members must be appointed for a term of three years, or until a successor has been appointed and qualifies. Each member of the governing board shall qualify by taking the oath prescribed for civil officers and filing the same with the county auditor in his county of residence. No person may serve as a board member for more than two consecutive three-year terms. No person may be appointed to the board who has served within three years

prior to appointment, unless ~~he~~ the person is being reappointed to a second consecutive term. Vacancies occurring on the board must be filled in the same manner as regular appointments; provided, however, that a person appointed to fill the unexpired term of a member is eligible for appointment to another term only if ~~his~~ the person's consecutive service on the board after completion of ~~such~~ the term will not exceed six years. ~~No~~ A person is ~~not~~ eligible for appointment if ~~he~~ the person would become seventy-one years of age or older before the end of ~~such~~ the term.

SECTION 178. AMENDMENT. Section 50-06.3-07 of the North Dakota Century Code is amended and reenacted as follows:

50-06.3-07. Claims against the estate of recipients or patients. Claims for fees and expenses charged by the state under this chapter may be filed by the department against the estate of a person liable for the fees and expenses at any time prior to the final distribution of the estate with the same priority as claims of general creditors which are filed against the estates of decedents. Any claim denied or rejected by a personal representative must clearly state, in a written notice to the department, the reason for denial or rejection. Every personal representative, upon the granting of letters of administration or testamentary, shall, at the time that publication of notice to creditors is made, forward to the department a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective ~~county~~ district court, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. If no notice is required by the proceedings, the personal representative shall forward to the department a copy of the petition or application commencing the proceedings, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department is paid in full, the personal representative shall provide to the department a statement of assets and disbursements.

SECTION 179. AMENDMENT. Section 50-06.3-09 of the North Dakota Century Code is amended and reenacted as follows:

50-06.3-09. Expenses chargeable against guardianship estate of patient - Restrictions. The expenses chargeable by the state for the care and treatment of any patient at the state hospital must be charged against the guardianship estate of the patient, if the patient has an estate, subject to the following restrictions:

1. No part of the estate may be taken if the patient has dependents within the United States dependent upon the estate for support and the taking of all or a portion of the estate would result in undue hardship to those dependents.
2. No real property belonging to the estate may be sold during the lifetime of the patient except for the maintenance and support of the patient's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the ~~county~~ district court having jurisdiction of the estate, with the consent of the department.

3. No personal property belonging to the estate may be sold within five years from the date upon which the patient was sent to the institution unless the property is ordered sold by the **county district court** having jurisdiction of the estate for the reason that the property is likely to deteriorate in value during the time herein specified.

If any real or personal property is sold pursuant to this section, the **county district court** shall order the proceeds of the sale to be invested safely for the benefit of the patient or to be used for the support and maintenance of the patient's dependents, or used to pay the costs of care and treatment of the patient.

SECTION 180. AMENDMENT. Section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-07. Recovery from estate of medical assistance recipient. On the death of any recipient of medical assistance who was sixty-five years of age or older when ~~he~~ the recipient received ~~such~~ the assistance, the total amount of medical assistance paid on behalf of the decedent following ~~his~~ the decedent's sixty-fifth birthday must be allowed as a preferred claim against the decedent's estate after funeral expenses not in excess of fourteen hundred dollars, expenses of last illness, and expenses of administering the estate, including attorney's fees approved by the court, and claims on behalf of the state hospital have been paid. No claim must be paid during the lifetime of the decedent's surviving spouse, if any, nor while there is a surviving child who is under the age of twenty-one years or is blind or permanently and totally disabled, but no timely filed claim may be disallowed because of the provisions of this section. Every personal representative, upon the granting of letters of administration or testamentary shall, at the time that publication of notice to creditors is required, forward to the department of human services a copy of the petition or application commencing probate, heirship proceedings, or joint tenancy tax clearance proceedings in the respective **county district court**, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of such estate. If no notice is required by the proceedings, the personal representative shall forward to the department of human services a copy of the petition or application commencing the proceedings, together with a list of the names of the legatees, devisees, surviving joint tenants, and heirs at law of the estate. Unless a properly filed claim of the department of human services is paid in full, the personal representative shall provide to the department a statement of assets and disbursements in the estate.

SECTION 181. AMENDMENT. Section 54-12-01.3 of the North Dakota Century Code is amended and reenacted as follows:

54-12-01.3. Judicial officers - Legal defense - Indemnification. The attorney general shall appear and defend any supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, ~~county court judge~~, judicial referee, or juvenile supervisor of this state in any action founded upon an act or omission arising out of performance of an official duty. If the attorney general determines that the attorney general or an assistant attorney general is unable to defend the judicial officer, the attorney general shall employ a special assistant attorney general to represent the judicial officer. The state shall indemnify the supreme court justice, supreme court surrogate justice, district court judge, district court surrogate judge, ~~county court judge~~.

judicial referee, or juvenile supervisor of this state for all reasonable costs, including attorney fees, incurred by or awarded against the judicial officer in the action.

SECTION 182. AMENDMENT. Section 57-26-02 of the North Dakota Century Code is amended and reenacted as follows:

57-26-02. Who may redeem. Redemption from tax sale may be made by:

1. Any person or corporation having an interest in the real estate sold, whether such interest existed at the time of sale or was acquired thereafter; or
2. Any heir, devisee, or creditor of an owner who dies after such sale, or the executor or administrator of the estate of such deceased owner.

In cases where the interest or right of the person making redemption is not of record in the office of the register of deeds, or of the county auditor, or of the clerk of the district court, ~~or of the county court of the county;~~ ~~such~~ the redemptioner shall file with the county auditor at the time of making redemption an affidavit stating under what right or claim such redemption is made, and the tax receipt issued shall show under what claim or right redemption was made.

SECTION 183. AMENDMENT. Section 57-37.1-06 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-06. Estate tax return required - Tax commissioner to assess tax - ~~County District~~ court to apportion federal and state estate taxes. The personal representative of an estate shall file with the tax commissioner the estate tax return required by this chapter. The tax commissioner shall assess the tax payable pursuant to the provisions of this chapter and furnish the personal representative with a statement thereof; if all or any part of the property included in the federal gross estate is being administered by the ~~county district court of~~ ~~of~~ ~~the~~ ~~serving~~ any county in this state, the tax commissioner shall also furnish a copy of the statement to that ~~county district court.~~ The federal and North Dakota estate taxes ~~shall~~ ~~must~~ be apportioned as provided in section 30.1-20-16.

SECTION 184. AMENDMENT. Section 57-37.1-12 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-12. Duties of depositories - Inventory of contents of safe deposit box required. No safe deposit company, trust company, corporation, bank, or other institution or person engaged in the business of renting safe deposit boxes or other receptacles of similar character ~~shall~~ ~~may~~ rent any such box or receptacle without first procuring from each person given access thereto an agreement in writing to the effect that upon the death of any person having the right of access to ~~such~~ the box or receptacle, notice of ~~such~~ the person's death will be given to ~~such~~ the safe depository, bailee, or lessor before seeking access to ~~such~~ the box or receptacle. A safe deposit company, trust company, corporation, bank, or other institution or person having the possession, control, custody, or partial custody of any safe deposit box or similar receptacle ~~shall~~ ~~may~~ not permit access to ~~such~~ the box or receptacle after the death of any person who at the time of ~~his~~ ~~the~~ person's death had the right or privilege of access thereto, by any other

person until a complete inventory of the entire contents of the safe deposit box or receptacle has been prepared by the personal representative of the deceased person, a cotenant of the safe deposit box or receptacle, or any other person granted access by county district court order in the presence of an officer or other agent of the lessor of the box. The inventory so prepared ~~shall~~ must be filed with the state tax commissioner by the lessor of the box within thirty days from the date of its preparation. After the lessor of the box has complied with the provisions of this section, it ~~shall~~ may not limit access to the safe deposit box or similar receptacle by the personal representative of the deceased person or cotenant of the safe deposit box or receptacle or to any other person granted access by county district court order, and it ~~shall be~~ is released of all liability to the state of North Dakota, and for any assets, documents, or things taken from the safe deposit box or similar receptacle.

SECTION 185. AMENDMENT. Section 58-02-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

58-02-23. Division of assets and liabilities of the original township. Within thirty days after the first election is held in a civil township established upon a petition described in section 58-02-21, the board of county commissioners, the county auditor, and the county a district judge designated by the presiding judge of the judicial district in which the new township is located shall meet as a board of arbitrators and shall determine a just and fair distribution of the property and apportionment of the debts of the original township between it and the township separated therefrom and established as a civil township. The new township shall succeed to a proportional share of the moneys and other property of the original township and shall assume a proportional share of the debts and liabilities thereof existing at the time of the division, such proportion to be determined by the relative valuation of the property of the respective parts as shown by the last preceding assessment. The board of arbitrators, upon subpoena issued by the clerk of the district court on the request of such board, may bring before it all necessary witnesses, books, and papers. The determination of the board of arbitrators may be reviewed by the district court on appeal in accordance with the procedure provided in section 28-34-01, and shall be enforced by the courts.

SECTION 186. AMENDMENT. Subsection 3 of section 59-01-11 of the North Dakota Century Code is amended and reenacted as follows:

3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves and the district or county court for the latter in the manner above prescribed.

SECTION 187. AMENDMENT. Section 59-02-12 of the North Dakota Century Code is amended and reenacted as follows:

59-02-12. Discretionary power of trustee - How exercised. A discretionary power conferred upon a trustee is not presumed to be left to his the trustee's arbitrary discretion, but ~~shall be~~ is controlled by the district or county court if not reasonably exercised, unless an absolute discretion clearly is conferred by the declaration of trust.

SECTION 188. AMENDMENT. Subsection 6 of section 59-02-20 of the North Dakota Century Code is amended and reenacted as follows:

6. By the district ~~or county~~ court.

SECTION 189. AMENDMENT. Section 59-04-02 of the North Dakota Century Code is amended and reenacted as follows:

59-04-02. Commencement of trust proceedings. Any trustee, beneficiary, or person interested in a trust may file a petition with the clerk of the district ~~or county~~ court praying that the administration of the trust be supervised. The form of ~~said~~ the petition in substance ~~shall~~ must be as is provided in sections 59-04-03 and 59-04-04 and notice of hearing thereon ~~shall~~ must be given to interested parties as provided by sections 30.1-03-01 and 30.1-33-06, and ~~such any~~ further notice ~~shall~~ must be given as may be prescribed by court rules. The court, upon hearing, may enter its order that all further proceedings in the supervision of the administration of ~~such the trust shall~~ must be had in ~~said that~~ court. The district ~~or county~~ court ~~of serving~~ the county where any portion of the trust property is located, upon petition of any interested person and upon like notice and hearing, may adopt and confirm as the act of ~~such that~~ district ~~or county~~ court any order or decree of a foreign court with respect to the sale, mortgaging, leasing, or other disposition of the real property of a trust within this state. In all cases of public or charitable trusts, the attorney general and the state's attorney of the county where the trust is established ~~shall be~~ are deemed persons interested in the trust estate.

SECTION 190. AMENDMENT. Section 59-04-03 of the North Dakota Century Code is amended and reenacted as follows:

59-04-03. Form of title in trust administration proceeding. The caption or title of the petition and of all orders, notices, or other proceedings relating to the supervision of the administration of a trust in district ~~or county~~ court ~~shall~~ must be substantially as follows:

In the Matter of the administration by -----, trustee, of the trust created by -----.

SECTION 191. AMENDMENT. Subsection 12 of section 59-04-04 of the North Dakota Century Code is amended and reenacted as follows:

12. A prayer for the supervision of the administration of the trust by the district ~~or county~~ court and for the direction or order of the district ~~or county~~ court in respect to such other and specific matters as the petition may disclose.

SECTION 192. AMENDMENT. Section 59-04-08 of the North Dakota Century Code is amended and reenacted as follows:

59-04-08. Appearance - Waiver of notice - Admission of service. The general appearance of any interested person at any hearing in person, by attorney, or by the guardian of a minor or incompetent person ~~shall render renders~~ prior notice to ~~him that person~~ unnecessary. Any such person, attorney, or guardian may waive notice of any hearing in the proceeding by written waiver filed with the clerk of the district ~~or county~~ court. Any such person, guardian, or attorney in the proceedings may admit in writing the due service of any notice in the proceeding. Where jurisdiction is made to depend upon the appearance, waiver, or admission of an attorney, ~~his~~ the attorney's authority in writing must be filed with the clerk.



SECTION 193. AMENDMENT. Section 59-04-10 of the North Dakota Century Code is amended and reenacted as follows:

59-04-10. ~~Orders of district or county court~~— Effect of court orders. Every order entered in trust proceedings, upon the notice prescribed in section 30.1-03-01, ~~shall have~~ has the force and effect of a judgment. It ~~shall be is~~ subject to appeal as provided by the terms of section 59-04-25 and ~~shall be is~~ binding upon all interested persons resident within or without the state, known or unknown, ascertained and in being, or otherwise.

SECTION 194. AMENDMENT. Section 59-04-15 of the North Dakota Century Code is amended and reenacted as follows:

59-04-15. Powers and duties of trustee. Every act of the trustee in contravention of the terms of the trust and statute ~~shall be~~ is absolutely void except where the district ~~or county~~ court having jurisdiction and supervision of the administration of ~~such the~~ trust, by order, on notice and hearing as provided in this chapter, ~~shall authorize any such~~ authorizes the trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in such manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that ~~such the~~ order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested therein, or who thereafter may acquire an interest therein, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of ~~such the~~ instrument will tend to destroy the trust estate or create losses of principal or income.

SECTION 195. AMENDMENT. Section 59-04-24 of the North Dakota Century Code is amended and reenacted as follows:

59-04-24. Correction of mistakes - Relief from default - Copy of record furnished. Any person interested in the trust estate may file written objections to any account, report, or petition of the trustee before or at the time of the hearing and may present proof and evidence in support thereof. Any order made by the court in ~~such the~~ proceeding may be modified or vacated to correct clerical errors or mistakes of calculation apparent on the face of the records, either by the court on its own motion or with or without notice. Within six months after the entry of any order, the district ~~or county~~ court may relieve any interested person from the order where it has been taken against ~~him the person~~ through ~~his that person's~~ mistake, inadvertence, surprise, excusable neglect, or default therein, upon fifteen days' notice to the opposite party as prescribed by the terms of section 59-04-22. Whenever any person interested in the trust estate has been served with any notice of any proceeding based upon any petition, report, accounting, or other record required to be filed under the terms of this chapter, ~~he that person~~ may demand a copy thereof and it ~~shall must be~~ furnished forthwith and mailed or served on the interested party demanding it, free of charge, by the trustee or any other party commencing the proceeding.

SECTION 196. AMENDMENT. Section 59-04-25 of the North Dakota Century Code is amended and reenacted as follows:

59-04-25. Appeals. Any trustee, beneficiary, or person interested in such the trust feeling aggrieved by any order of the district or county court made in such the proceedings may appeal from the same or any part thereof to the supreme court within six months after the filing of such the order with the clerk of the district or county court. Such The appeal shall must be taken in the manner, and upon the record and notice, provided by the terms of this chapter, and a single appeal may include any number of orders made appealable by this section.

SECTION 197. AMENDMENT. Section 59-04-26 of the North Dakota Century Code is amended and reenacted as follows:

59-04-26. Appeal - How taken. Within the time prescribed by this chapter, any interested person may take an appeal to the supreme court from any order or orders entered by the district or county court, by the service of a notice of appeal and by filing the same with a return or affidavit of service or admission thereof, together with a bond for costs in the sum of two hundred fifty dollars, with the clerk of the district or county court. The bond for costs shall must be executed by the appellant, with the sureties to be approved by the clerk of the district or county court, and shall must be conditioned to the effect that the appellant will pay to the parties entitled thereto all costs that may be awarded against the appellant upon such appeal.

SECTION 198. AMENDMENT. Section 59-04-27 of the North Dakota Century Code is amended and reenacted as follows:

59-04-27. Stay of proceedings. Upon the perfecting of an appeal in the manner prescribed in section 59-04-26, no further proceedings under the order or orders appealed from may be taken pending the appeal, unless the district court, county court, or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond shall may be required, except the cost bond in the sum of two hundred fifty dollars, to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

SECTION 199. AMENDMENT. Section 59-04-29 of the North Dakota Century Code is amended and reenacted as follows:

59-04-29. Procedure on appeal. The procedure on appeal to the supreme court and for certification of the record and the form of assignment of errors shall be is, insofar as applicable, and except as herein otherwise provided, as now provided by the statute for appeals in cases properly triable by the court without a jury in which an issue of fact has been joined. Where no testimony was taken by the court reporter at the hearing on which the order or orders appealed from was entered, the original records and files of the district or county court used upon the hearing, with the original notice of appeal and undertaking, shall must be attached together and certified by the clerk of court and shall constitute the record for the purposes of appeal. The time for procuring a transcript of evidence for appeal commences to run from the date of the entry of the order from which the appeal is taken.

SECTION 200. AMENDMENT. Section 59-04-31 of the North Dakota Century Code is amended and reenacted as follows:

59-04-31. Demand for change of judge - Disqualification of judge. Any judge of the district ~~or county~~ court before whom a proceeding for the supervision of the administration of a trust has been commenced as is provided by this chapter may be disqualified to act as such judge at any time thereafter by the filing of a demand for change of judge with the clerk of ~~such the~~ court, as is provided in title 29, by any person interested in the trust estate who owns or controls a beneficial interest therein amounting to twenty-five percent or more in value of the estate. The procedure upon the filing of ~~such the~~ demand in other respects ~~shall~~ must conform to the procedure upon the filing of a demand for change of judge prescribed in title 29.

SECTION 201. AMENDMENT. Section 59-05-28 of the North Dakota Century Code is amended and reenacted as follows:

59-05-28. Binding conditions - Court may supply defective execution. With the exceptions contained in this chapter, the intentions of the author of a power as to the mode, time, and conditions of its execution must be observed, subject to the power of a district ~~or county~~ court to supply a defective execution in the cases provided in sections 59-05-37 and 59-05-57.

SECTION 202. AMENDMENT. Section 59-05-55 of the North Dakota Century Code is amended and reenacted as follows:

59-05-55. District ~~or county~~ court acts if testator omits to designate trustee. When a power in trust is created by will and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district ~~or county~~ court.

SECTION 203. REPEAL. Sections 11-09-22, 11-09-23, 11-11-12, and 11-15-10 of the North Dakota Century Code, and sections 24-07-25, 27-01-04, 27-01-05, chapters 27-07.1 and 27-08.2, sections 27-09.1-21 and 27-20-04, chapter 27-26, and section 31-09-07 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 204. EFFECTIVE DATE. Sections 2 through 82, 84, 85, 87, 88, 91 through 155, and 157 through 203 of this Act become effective on January 2, 1995.

SECTION 205. EXPIRATION DATE. Section 156 of this Act is effective through January 1, 1995, and after that date is ineffective.

SECTION 206. LEGISLATIVE INTENT. The legislative assembly recognizes that this Act to implement article VI, section 1, of the Constitution of North Dakota, while it makes no present statutory change in the current distribution of court revenue, will result in the transfer of responsibility for certain court expenditures beginning January 2, 1995, from the counties to the state, including judicial compensation expenditures associated with the transition from county court judgeships to district court judgeships. The counties will remain responsible for all county court services until January 1, 1995, and thereafter will remain responsible for all other substantial court expenditures, including costs associated with the provision of courthouse facilities and the office and staff of clerk of district court in each county.

The legislative assembly also recognizes that the present allocation of court revenue will change substantially, without the need for statutory revision, due to anticipated changes in judicial practices associated with the imposition of fines and the assessment of court costs, thereby subjecting counties to diminished court revenues and the state to increased fine revenues to the common schools trust fund. Although it is difficult to assess the precise fiscal impact of the transition from county court judgeships to district court judgeships, the legislative assembly recognizes that the required reduction in the present number of judges under this Act will result in a substantial cost savings to all taxpayers of North Dakota through the judicial reductions that will occur, regardless of whether the court expenditures are borne by the counties or the state.

Therefore, it is the intent of the legislative assembly that the interim legislative council committee assigned to review and monitor the implementation of this Act pursuant to Senate Concurrent Resolution No. 4043, as approved by the fifty-second legislative assembly, in conjunction with the office of the state court administrator, perform a detailed analysis of the fiscal implications of this Act prior to the convening of the fifty-third legislative assembly and the fifty-fourth legislative assembly. It is the intent of the legislative assembly that the transition to a single trial court of general jurisdiction include revision of the distribution of court revenues and legislative appropriations from the state general fund to provide a fair and equitable allocation of expenditures between the counties and the state.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 327

SENATE BILL NO. 2028  
(Legislative Council)  
(Interim Budget Committee on Government Administration)

### PRESIDING DISTRICT JUDGES

AN ACT to amend and reenact section 27-05-05 of the North Dakota Century Code, relating to the election of presiding district judges; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-05. Presiding judge of district - How determined - Term of office. ~~In~~ The district and county judges in judicial districts of this state having more than one district judge, the supreme court shall name the presiding judge thereof, who shall serve in such position until the supreme court shall appoint his successor shall elect from among the district judges a presiding judge who shall serve for a period of three years beginning January 1, 1992. A presiding judge in districts having more than one district judge must be elected every three years. In the event of a vacancy, a presiding judge must be elected in the manner provided in this section to serve the remainder of the term.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1992.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 328

SENATE BILL NO. 2268

(Senator Stenehjem)

(Representatives Clayburgh, Kretschmar, Wentz)

### FAMILY COURTS ELIMINATED

AN ACT to amend and reenact sections 14-05-23, 14-06-02, subsection 1 of section 14-14-15, sections 14-14-16, 14-14-17, subsections 4 and 5 of section 50-01-09, and sections 50-03-07 and 50-06-05.1 of the North Dakota Century Code, relating to references to family courts; and to repeal chapter 27-05.1 of the North Dakota Century Code, relating to the establishment of family courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

14-05-23. Temporary support, attorney fees, and custody. During any time in which an action for divorce is pending ~~or a family court has jurisdiction~~, the court, upon application of a party, may issue, ex parte, an order requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and attorney fees and awarding custody of any minor children to any party. Such orders may be issued and served in accordance with such rules as are promulgated and filed with the clerks of the district courts within the judicial district from time to time by the district judges of the judicial district. The party to whom the order is directed ~~shall have~~ has the right, upon motion, to have a hearing upon the necessity for the issuance of such an order or the amounts to be paid, and unless such a motion is served and filed in the office of the clerk of the district court within five days after service of an order issued under the provisions of this section, the order ~~shall be~~ is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court.

SECTION 2. AMENDMENT. Section 14-06-02 of the North Dakota Century Code is amended and reenacted as follows:

14-06-02. Temporary support, attorney fees, and custody. During any time in which an action for separation is pending ~~or a family court has jurisdiction~~, the court, upon application of a party, may issue, ex parte, an order requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and attorney fees and awarding custody of any minor children to any party. Such orders may be issued and served in accordance with such rules as are promulgated and filed with the clerks of the district courts within the judicial district from time to time by the district judges of the judicial district. The party to whom the order is directed ~~shall have~~ has the right, upon motion, to have a hearing upon the necessity for the issuance of such an order or the amounts to be paid, and unless such a motion is served and filed in the office of the

clerk of the district court within five days after service of an order issued under the provisions of this section, the order ~~shall be~~ is final and nonappealable pending a final determination of the issues raised by the pleadings or until further order of the court.

SECTION 3. AMENDMENT. Subsection 1 of section 14-14-15 of the North Dakota Century Code is amended and reenacted as follows:

1. A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court ~~or family court~~ of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court ~~or family court~~ of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

SECTION 4. AMENDMENT. Section 14-14-16 of the North Dakota Century Code is amended and reenacted as follows:

14-14-16. Registry of out-of-state custody decrees and proceedings. The clerk of each district court ~~or family court~~ shall maintain a registry in which ~~he~~ the clerk shall enter the following:

1. Certified copies of custody decrees of other states received for filing.
2. Communications as to the pendency of custody proceedings in other states.
3. Communications concerning a finding of inconvenient forum by a court of another state.
4. Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

SECTION 5. AMENDMENT. Section 14-14-17 of the North Dakota Century Code is amended and reenacted as follows:

14-14-17. Certified copies of custody decrees. The clerk of the district court ~~or family court~~ of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

SECTION 6. AMENDMENT. Subsections 4 and 5 of section 50-01-09 of the North Dakota Century Code are amended and reenacted as follows:

4. Subject to subsection ~~4~~ 17 of section 50-06-05.1, to administer the food stamp program in the county under the direction and supervision of the department of human services in conformity with the Food Stamp Act of 1964, as amended, and to enter into an agreement for such purpose with the department of human services.
5. Subject to subsection ~~5~~ 19 of section 50-06-05.1, to administer the energy assistance program in the county under the direction and supervision of the department of human services and to enter into

an agreement for such purpose with the department of human services.

\* SECTION 7. AMENDMENT. Section 50-03-07 of the North Dakota Century Code is amended and reenacted as follows:

50-03-07. Appropriation for food stamp program administration - Financial agreement. Subject to subsection ~~16~~ 17 of section 50-06-05.1, the board of county commissioners of each county annually shall appropriate and make available to the poor relief fund an amount sufficient to pay the local expenses of administration of the food stamp program and shall enter into a food stamp financial agreement with the department of human services.

SECTION 8. AMENDMENT. Section 50-06-05.1 of the North Dakota Century Code is amended and reenacted as follows:

50-06-05.1. Powers and duties of the department. The department has the following powers and duties to be administered, with the advice of the board, by the department through its state office or through regional human service centers or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.
4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.

\* NOTE: Section 50-03-07 was also amended by section 9 of House Bill No. 1553, chapter 504.



10. To secure, hold, and administer for the purpose for which it is established, any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the board or department, and to administer those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child-care facilities, nonmedical adult-care facilities and maternity homes, and persons or organizations receiving and placing children, and to require those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if determined to be necessary.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self, parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the developmental center at Grafton, state hospital, or North Dakota industrial school.
15. ~~To provide marital counseling to individuals ordered to participate in such treatment by the family court.~~
- ~~16.~~ To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
- ~~17.~~ 16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.

- ~~16-~~ 17. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program if the rate of federal financial participation in administrative costs provided under Public Law 93-347 is decreased or limited, or if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
- ~~19-~~ 18. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
- ~~20-~~ 19. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program if the rate of federal financial participation in administrative costs is decreased or limited to less than fifty percent of total administrative costs, or if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
- ~~21-~~ 20. To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of the child.
- ~~22-~~ 21. To exercise and carry out any other powers and duties granted the department under state law.

\* SECTION 9. REPEAL. Chapter 27-05.1 of the North Dakota Century Code is repealed.

Approved March 11, 1991  
Filed March 11, 1991

\* NOTE: Section 27-05.1-06 was amended by section 15 of Senate Bill No. 2068, chapter 54.

## CHAPTER 329

SENATE BILL NO. 2352  
(Senators Stenehjem, Holmberg)  
(Representative Kretschmar)

### COUNTY JUDGE SALARIES

AN ACT to amend and reenact section 27-07.1-04 of the North Dakota Century Code, relating to the salary of county court judges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-07.1-04. Salaries of judges of county courts - Amount and payment. A county judge is entitled to an annual salary of ~~eighty-five percent of the salary paid to a district court judge as of January 1, 1989, commencing January 1, 1992, of fifty-six thousand dollars and commencing January 1, 1993, an annual salary of fifty-seven thousand five hundred dollars~~, but the county or counties may increase that amount ~~up~~ to the same salary as a district court judge. Such salary shall be payable by the county or counties in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 330

SENATE BILL NO. 2351  
(Senators Stenehjem, Holmberg)  
(Representative Kretschmar)

### COUNTY JUDGE COMPENSATION COMMISSION

AN ACT to create and enact a new section to chapter 27-07.1 of the North Dakota Century Code, relating to the creation of a county court judge compensation commission; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 27-07.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

County court judge compensation commission - Creation - Duties. There is hereby created a county court judge compensation commission. The commission must be composed of two county court judges, two county commissioners, one county auditor, and an attorney in private practice. None of the six members of the commission may reside in the same county. The commission members serve from July first of odd-numbered years until June 30 of the following odd-numbered year and may succeed themselves upon reappointment by their respective appointing authorities. At the initial meeting of the commission, it shall select one of the county judge members as its presiding official.

The county judge members must be appointed by the judicial conference, the county commission members and the county auditor member must be appointed by the association of counties and the attorney must be appointed by the state bar association. Each member must currently hold the office qualifying the member for appointment to the commission. One county court judge member must currently serve as a county court judge of a multi-county district and one must currently serve a single county.

Commission members shall serve without compensation. The expenses of commission members are the responsibility of the appointing authorities.

The commission shall meet no later than December of each even-numbered year for the purpose of studying and recommending county judges' compensation to the legislative assembly. The commission shall submit its written report with supporting documentation to the legislative assembly, through the director of the legislative council and to the respective appointing authorities no later than the day upon which the legislative assembly convenes. The report of the commission is not binding upon the legislative assembly.

The commission or its designee shall, if requested by any committee of the legislative assembly, appear before such committee and give testimony regarding the commission's recommendations.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 331

SENATE BILL NO. 2335  
(Senators Nalewaja, Jerome, Traynor)  
(Representatives Mahoney, Schmidt, Trautman)

### SMALL CLAIMS COURT JURISDICTION

AN ACT to create and enact a new section to chapter 27-08.1 of the North Dakota Century Code, relating to dismissal of a case without prejudice; and to amend and reenact subsection 1 of section 27-08.1-01 and section 27-08.1-03 of the North Dakota Century Code, relating to the jurisdictional limit and amount of counterclaims in small claims courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-08.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All judges of the county courts shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of said jurisdiction shall be known and referred to as the "small claims court". The jurisdiction of such court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed ~~two~~ three thousand dollars.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed ~~two~~ three thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of ~~two~~ three thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the

property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subsection 2 of section 11-17-04 must be charged for filing the claim affidavit.

SECTION 3. A new section to chapter 27-08.1 of the North Dakota Century Code is created and enacted as follows:

Dismissal without prejudice. If the judge determines at any stage of the proceedings that the case may not be fairly disposed of in small claims court, the judge may dismiss the case without prejudice. A determination that a case may not be fairly disposed of in small claims court must be based on complexity of factual or legal issues or a determination that relief other than money damages or cancellation of an agreement is necessary to dispose of the case. If a case is dismissed under this section, the filing fee must be refunded to the plaintiff.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 332

SENATE BILL NO. 2385  
(Stenehjem)

### JURY SELECTION AND SERVICE

AN ACT to amend and reenact sections 27-09.1-03, 27-09.1-05, 27-09.1-07, subsection 1 of section 27-09.1-08, sections 27-09.1-09, 27-09.1-12, 27-09.1-13, and subsection 1 of section 27-09.1-17 of the North Dakota Century Code, relating to juries; and to repeal sections 27-09.1-04 and 27-09.1-06 of the North Dakota Century Code, relating to uniform jury selection and service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

27-09.1-03. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Court" means the district court of this state, and includes, when the context requires, any judge of the court;
2. "Clerk" and "clerk of court" include any deputy clerk;
3. "Master list" means the list of actual voters for the county which shall be supplemented with names from other sources prescribed pursuant to this chapter (section 27-09.1-05) in order to foster the policy and protect the rights secured by this chapter (sections 27-09.1-01 and 27-09.1-02);
4. "Lists of actual voters" means the official records of persons actually voting in the most recent general election;
5. "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors;
6. "Master jury wheel" means the jury wheel in which are placed names or identifying numbers of prospective jurors taken from the master list (section 27-09.1-06);
7. "Qualified jury wheel" means the jury wheel in which are placed the names or identifying numbers of prospective jurors whose names are drawn at random from the master jury wheel (section 27-09.1-07) and who are not disqualified (section 27-09.1-08).

\* SECTION 2. AMENDMENT. Section 27-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05. Master list.

\* NOTE: Section 27-09.1-05 was also amended by section 17 of Senate Bill No. 2068, chapter 54.

1. The jury commission clerk for each county shall compile and maintain a master list consisting of all lists of actual voters for the county supplemented with names from other lists of persons resident therein, such as lists of utility customers, property taxpayers, motor vehicle registrations, and driver's licenses, which the supreme court of this state from time to time designates. ~~The supreme court shall initially designate the other lists within ninety days following the effective date of this chapter and exercise the authority to designate from time to time in order to foster the policy of and protect the rights secured by this chapter (sections 27-09.1-01 and 27-09.1-02).~~ In compiling the master list the jury commission clerk shall avoid duplication of names.
2. Whoever has custody, possession, or control of any of the lists making up or used in compiling the master list, including those designated under subsection 1 by the supreme court as supplementary sources of names, shall make the list available to the jury commission clerk for inspection, reproduction, and copying at all reasonable times.
3. The master list shall be open to the public for examination.

SECTION 3. AMENDMENT. Section 27-09.1-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-07. ~~Drawings from master jury wheel~~— Juror qualification form.

1. From time to time and in a manner prescribed by the court, the jury commission publicly shall draw at random from the master jury wheel the names or identifying numbers of as many prospective jurors as the court by order requires. ~~The clerk shall prepare an alphabetical list of the names drawn. Neither the names drawn nor the list shall be disclosed to any person other than pursuant to this chapter or specific order of the court. The clerk shall mail to every the prospective juror whose name is drawn from the master jury wheel a juror a qualification form accompanied by instructions to fill out and return the form by mail to the clerk within ten days after its receipt. The juror qualification form shall be subject to approval by the state court administrator as to matters of form and shall elicit the name, address of residence, and age of the prospective juror and whether the prospective juror:~~
  - a. Is a citizen of the United States and a resident of the county;
  - b. Is able with reasonable accommodation to communicate and understand the English language;
  - c. Has any physical or mental disability impairing ~~his~~ the prospective juror's capacity to render satisfactory jury service; and
  - d. Has lost the right to vote because of imprisonment resulting from conviction of a felony (section 27-09.1-08).

The juror qualification form shall contain the prospective juror's declaration that ~~his~~ the responses are true to the best of ~~his~~ the



prospective juror's knowledge and ~~his~~ the prospective juror's acknowledgment that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars or imprisonment in the county jail for not more than thirty days, or both. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for ~~him~~ the prospective juror and shall indicate that ~~he has done so~~ fact and the reason therefor. If it appears there is an omission, ambiguity, or error in a returned form, the clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification, or correction and to return the form to the jury commission clerk within ten days after its second receipt.

2. Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the jury commission clerk to appear forthwith before the clerk to fill out the juror qualification form. At the time of ~~his~~ the prospective juror's appearance for jury service, or at the time of any interview before the court or clerk, ~~any~~ the prospective juror may be required to fill out another juror qualification form in the presence of the court or clerk, at which time the prospective juror may be questioned, but only with regard to ~~his~~ responses to questions contained on the form and grounds for ~~his~~ excuse or disqualification. Any information thus acquired by the court or clerk shall be noted on the juror qualification form.
3. A prospective juror who fails to appear as directed by the commission clerk pursuant to subsection 1 shall be ordered by the court to appear and show cause for ~~his~~ failure to appear as directed. If the prospective juror fails to appear pursuant to the court's order or fails to show good cause for ~~his~~ failure to appear as directed by the jury commission clerk, ~~he~~ the prospective juror is guilty of criminal contempt and upon conviction may be fined not more than one hundred dollars or imprisoned in the county jail for not more than three days, or both.
4. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror is guilty of a class B misdemeanor and upon conviction may be fined not more than five hundred dollars or imprisoned in the county jail for not more than thirty days, or both.

SECTION 4. AMENDMENT. Subsection 1 of section 27-09.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The court, upon request of the jury commission clerk of court or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical list of names drawn from the master jury wheel as otherwise directed by the state court administrator.

SECTION 5. AMENDMENT. Section 27-09.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-09. Qualified jury wheel - Selection and summoning Summoning of jury panels.

1. The jury commission shall maintain a qualified jury wheel and shall place therein the names or identifying numbers of all prospective jurors drawn from the master jury wheel who are not disqualified ~~(section 27-09.1-08)~~.
2. A judge of any court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commission to draw and assign to that court or official the number of qualified jurors he deems necessary for one or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random from the qualified jury wheel the number of qualified jurors specified. The qualified jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.
3. If a grand, petit, or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons either personally or by first-class mail, addressed to the person at his or her that person's usual residence, business, or post-office address, requiring the person to report for jury service at a specified time and place.
4. 2. If there is an unanticipated shortage of available petit jurors ~~drawn from a qualified jury wheel~~, the court may require the sheriff to summon a sufficient number of petit jurors selected at random by the clerk ~~from the qualified jury wheel~~ in a manner prescribed by the court.
5. 3. A written procedure by which persons' names are drawn for jury service must be available for public review. The names of qualified jurors ~~drawn from the qualified jury wheel~~ and the contents of jury qualification forms completed by those jurors shall be made available to the public unless the court determines in any instance that this information in the interest of justice should be kept confidential or its use limited in whole or in part.

SECTION 6. AMENDMENT. Section 27-09.1-12 of the North Dakota Century Code is amended and reenacted as follows:

27-09.1-12. Challenging compliance with selection procedures.

1. Within seven days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the petit jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment or information, or for other appropriate relief, on the ground of a substantial failure to comply with this chapter in selecting the grand or petit jury.

2. Upon motion filed under subsection 1 containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of the ~~jury commissioner or the clerk~~, any relevant records and papers not public or otherwise available used by the ~~jury commissioner or the clerk~~, and any other relevant evidence. If the court determines that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with this chapter, the court shall stay the proceedings pending the selection of the jury in conformity with this chapter, quash an indictment or information, or grant other appropriate relief.
3. The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter.
4. The contents of any records or papers used by ~~the jury commissioner or the clerk~~ in connection with the selection process and not made public under this chapter shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection 1, until after ~~the master jury wheel has been emptied and refilled~~ and all persons selected to serve as jurors ~~before the master jury wheel was emptied~~ have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection 1.

SECTION 7. AMENDMENT. Section 27-09.1-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-13. Preservation of records. All records and papers compiled and maintained by the ~~jury commissioner or the clerk~~ in connection with selection and service of jurors shall be preserved by the clerk ~~after the master jury wheel used in their selection is emptied and refilled~~ ~~(section 27-09.1-06)~~ as ordered by the ~~supreme court~~ state court administrator.

SECTION 8. AMENDMENT. Subsection 1 of section 27-09.1-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An employer may not deprive an employee of employment, ~~or lay off,~~ penalize, threaten or otherwise coerce an employee with respect thereto, because the employee receives a summons or subpoena, responds thereto, serves as a juror or witness, or attends court for jury service or to give testimony pursuant to a subpoena.

SECTION 9. REPEAL. Section 27-09.1-04 of the North Dakota Century Code and section 27-09.1-06 of the 1989 Supplement to the North Dakota Century Code are repealed.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 333

HOUSE BILL NO. 1561  
(Mahoney, Kretschmar)

### BAR ASSOCIATION FEES

AN ACT to amend and reenact section 27-11-22 of the North Dakota Century Code, relating to annual license fees to practice law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-11-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-11-22. Annual licenses to practice law and to serve on certain courts - Requirement - Issuance - Fees. Every person who has an unrevoked certificate of admission to the bar of this state and who desires to engage in the practice of law, or who is to serve as a judge of a court of record, shall secure an annual license from the state bar board on or before January first of each year. The secretary-treasurer of the board shall issue the license upon compliance with the rules adopted or approved by the supreme court to assure the professional competence of attorneys, and upon payment of a fee established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed two hundred fifty dollars. The license is valid for the calendar year for which it is issued. Issuance of an annual license to practice law may not be conditioned upon payment of any surcharge, assessment, or fee in excess of the maximum fee established by this section. This section does not prohibit imposition of a reasonable fee for filing and processing reports of compliance with continuing education requirements.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 334

HOUSE BILL NO. 1145  
(Committee on Judiciary)  
(At the request of the Supreme Court)

### DUTIES OF ATTORNEYS

AN ACT to amend and reenact section 27-13-01 of the North Dakota Century Code, relating to duties of attorneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-13-01 of the North Dakota Century Code is amended and reenacted as follows:

27-13-01. Duties of attorneys. Every attorney and counselor at law shall:

1. Maintain ~~the~~ respect ~~due to the~~ for courts of justice and to judicial officers;
2. Counsel ~~and or~~ maintain no ~~actions, proceedings, or defenses other than those which appear claim that appears to him legal and just, except the defense of a person charged with a public offense the~~ attorney to be unjust, nor any defense except one the attorney believes to be honestly debatable under the law;
3. Perform faithfully the attorney's responsibilities as an officer of the court and protector of individual rights;
4. Support the provision of legal services for indigent persons, public service, and public education about the law;
5. Work to make the legal system more accessible, responsive, and just;
- 3- 6. Employ, for the purpose purposes of maintaining the causes confided to him the attorney, such those means only as are consistent with truth and honor, and never seek to mislead the judges judge or jury by any artifice or false statement of fact or law;
- 4- ~~Maintain inviolate the confidence, and at any peril to himself, preserve the secret, of his client;~~
- 5- ~~Abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;~~
- 6- ~~Refrain from encouraging either the commencement or continuance of an action or proceeding from any motive of passion or interest; and~~
7. Never reject for, from any consideration personal to himself the attorney, the cause of the defenseless or the oppressed, or delay anyone's cause for profit or malice.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 335

SENATE BILL NO. 2380  
(Stenehjem)

### JUVENILE COURT RECORDS

AN ACT to amend and reenact sections 27-20-51 and 27-20-54 of the North Dakota Century Code, relating to juvenile court records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-51 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-51. Inspection of court files and records.

1. Except as provided in subsection 2, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are confidential and may not be disclosed to the public and. Such files and records are open to inspection only by:
  - a. ~~The judge, officers, and professional~~ and staff of the juvenile court.
  - b. The parties to the proceeding ~~and or~~ their counsel ~~and representatives or guardian ad litem of any party.~~
  - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which shall be given a copy of the findings and order of disposition when it receives custody of the child.
  - d. ~~A~~ Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court.
  - e. ~~With leave of court any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.~~
  - f. ~~Upon leave of the court, the principal of any public or private school which is a member of the North Dakota high school activities association, or the superintendent of any school district which has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.~~

2. Such files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
  - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
  - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.
3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act which constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall, within ten days, report the finding to the director of the department of transportation.

SECTION 2. AMENDMENT. Section 27-20-54 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-54. Sealing and disposal of juvenile records and files - With and without hearings - Findings necessary - Notice - Reopening records Destruction of juvenile court records.

1. The court, upon its own motion, shall order the sealing of its files and records of every child who was the subject of a proceeding as a delinquent child or an unruly child under section 27-20-10, 27-20-31, or 27-20-32, or under juvenile court proceedings commenced before July 1, 1969, including records kept pursuant to sections 27-20-52, 27-20-53, and 12-46-15, if the court finds:
  - a. That two years have elapsed since the expiration of any informal adjustment or final order of disposition and the final discharge of the child; or
  - b. That the petition against the child has been dismissed for lack of jurisdiction or failure of proof.
2. When two years have elapsed since the expiration of any informal adjustment or final order of disposition and final discharge of a child whose files and records are subject to an order of sealing under subsection 1, the court, on application of the child, or his parent or guardian, by order may direct the destruction of all orders, records, and papers, and the disposal of all exhibits, relating to the child and contained in the files of the juvenile supervisor and the court, if the court finds, after a hearing, that since the expiration of any informal adjustment or final order of disposition and the final discharge of the child, the person who was the subject of the informal adjustment or final order of disposition has not been convicted of a felony, or of a misdemeanor

- involving moral turpitude; or adjudicated a delinquent child or unruly child; and no proceeding is pending seeking his conviction or adjudication:
- 3- Reasonable notice of the hearing under subsection 2 shall be given to:
    - a- The state's attorney of the county:
    - b- The authority granting the discharge if the final discharge was from an institution or from parole:
    - c- The law enforcement agencies or any representative of the state or state agency having custody of the files and records specified in sections 27-20-52, 27-20-53, and 12-46-15, and which are included in the application or motion:
  - 4- When ten years have elapsed since the expiration of any informal adjustment or final order of disposition and the final discharge of a child whose files and records are subject to an order of sealing under subsection 1; the court on its own motion, unless earlier ordered by the court under subsection 2; shall order the destruction of all orders, records, and papers; and the disposal of all exhibits, relating to the child and contained in the files of the juvenile supervisor and the court. All juvenile court records must be maintained pursuant to rules and procedures established by the North Dakota supreme court.
  - 5- 2. Upon entry of an order under subsection 2 or 4 the final destruction of a file or record, the proceeding shall be treated as if it never occurred. All index references, except those which may be made by the director of the department of transportation, shall be deleted, and upon inquiry in any matter the child, the court, law enforcement officers, and representatives of agencies, except the director of the department of transportation, shall properly reply that no record exists with respect to the child. Copies of the order shall be sent to The juvenile court shall notify each agency or official therein named. Each law enforcement agency and law enforcement officer except the director of the department of transportation, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to his apprehension, detention, and referral to the juvenile court and any record of disposition made by the juvenile court.
  - 6- The juvenile court may retain documents and records for the purpose of administration; planning; research; and statistical information provided all names have been expunged from documents and records subject to an order under subsection 2 or 4.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 336

HOUSE BILL NO. 1164  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### INDUSTRIAL SCHOOL STUDENT TRANSFER

AN ACT to create and enact section 27-21-11 of the North Dakota Century Code, relating to the transfer of students from the state industrial school to other institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 27-21-11 of the North Dakota Century Code is created and enacted as follows:

27-21-11. Transfer of students from the industrial school to other institutions. The director of the division of juvenile services may transfer students of the state industrial school to the state hospital whenever the director is satisfied, upon investigation and following appropriate standards of due process, that such transfer is advisable. If any student, so transferred, is maintained at the expense of the county from which the student was committed, the cost of the student's maintenance in the institution to which the student is transferred must be charged to such county and must be collected therefrom upon notice to the county auditor of said county by the director.

Approved March 27, 1991  
Filed March 28, 1991

# JUDICIAL PROCEDURE, CIVIL

## CHAPTER 337

SENATE BILL NO. 2368  
(Stenehjem)

### ADJOURNMENT OF JURORS

AN ACT to amend and reenact section 28-14-18 of the North Dakota Century Code, relating to the temporary dismissal of jurors in deliberations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-14-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-14-18. Conduct of jurors in retirement. When the case finally is submitted to the jurors, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place under charge of an officer, until they agree upon a verdict, are temporarily dismissed by the court, or are permanently discharged by the court. Unless, by order of the court, the officer having the jurors under the officer's charge must not suffer any communication to be made to them, or to make any himself except to ask them if they have agreed upon a verdict, and the officer, before the verdict is rendered, must not communicate to anyone the state of their deliberations or the verdict agreed upon. Where the jurors have not agreed upon a verdict by twelve midnight during normal working hours of any day of deliberations, the trial judge may temporarily dismiss the jurors from twelve midnight to eight a.m. that day and direct them when the jurors shall to resume deliberations. Where a trial jury contains both male and female members, the trial judge may direct that the female members of the jury be placed in charge of a female bailiff and permitted to retire to a suitable place for rest, and the male members of the jury placed in charge of a male bailiff for a similar purpose. In all cases where the jurors are dismissed or separated, as above stated, the trial judge shall admonish the members thereof that they must not in any manner discuss the case with anyone, nor permit anyone to discuss it with them, while they are so dismissed or separated, and that they must discuss and consider the case only in the room when all members of the jury are present.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 338

SENATE BILL NO. 2369  
(Stenehjem)

### JUDGMENT RENEWAL FILING

AN ACT to amend and reenact section 28-20-22 of the North Dakota Century Code, relating to filing an affidavit of renewal of a judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-20-22. Affidavit of renewal - Where filed - Entry. If the judgment was rendered in a ~~district~~ court of this state, ~~or was entered upon a transcript or abstract from a county court;~~ the affidavit for renewal must be filed with the clerk of ~~the district~~ court where the judgment was first docketed. If the judgment filed and docketed was a foreign judgment, the affidavit for renewal may be filed with the clerk of any ~~district~~ court where the same has been docketed. The clerk of ~~the district~~ court shall immediately enter in the judgment docket, ~~after a statement of the original judgment;~~ the fact of renewal, the date of renewal, and the amount for which the judgment is renewed. A copy of the affidavit of renewal and the docket entries thereon, certified by the clerk of ~~the district~~ court where the judgment is filed, may must be filed and docketed in any other county of the state in which a transcript of the original judgment was filed.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 339

SENATE BILL NO. 2367  
(Stenehjem)

### FOREIGN JUDGMENT FILING

AN ACT to amend and reenact section 28-20.1-02 of the North Dakota Century Code, relating to the filing and status of foreign judgments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

28-20.1-02. Filing and status of foreign judgments. A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this state may be filed in the office of the clerk of any district court or county court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a district court or county court of any county of this state and may be enforced or satisfied in like manner.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 340

HOUSE BILL NO. 1489  
(Kelsch)

### SERVICE OF NOTICE OF LEVY

AN ACT to amend and reenact section 28-21-12 of the North Dakota Century Code, relating to service of the sheriff's notice of levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-21-12. Notice of levy - Service - Contents. In all cases of levy upon personal property, the sheriff or other officer must ~~give notice thereof by copy to the debtor, the debtor's attorney, agent, or spouse, or, failing to find anyone of these conveniently, to such child as is described in section 20-22-11~~ serve the notice of levy in the same manner as a summons is served in accordance with the North Dakota Rules of Civil Procedure. Such notice must have written or printed upon its face the further notice to the debtor, that if exemptions are claimed or demanded, such claim must be made within ten days after service of notice.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 341

HOUSE BILL NO. 1335  
(Schneider, Kretschmar)

### JUDICIAL PROCESS EXEMPTIONS

AN ACT to amend and reenact section 28-22-03.1 of the North Dakota Century Code, relating to property exempt from judicial process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-22-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Pensions, annuity policies or plans, and life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under sections 15-39.1-12.2, 39-03.1-14.2, and 54-52-17.6. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

4. The debtor's right to receive, or property that is traceable to:
  - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
  - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
  - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
  - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 342

HOUSE BILL NO. 1194  
 (Committee on Judiciary)  
 (At the request of the Attorney General)

### ADMINISTRATIVE HEARINGS

AN ACT to create and enact five new subsections to section 28-32-01 and twelve new sections to chapter 28-32 of the North Dakota Century Code, relating to practices and procedures in administrative proceedings; to amend and reenact subsection 3 of section 4-18.1-18, subsection 2 of section 15-47-38, subsection 5 of section 28-32-03, sections 28-32-05, 28-32-06, 28-32-07, 28-32-08, 28-32-09, 28-32-11, 28-32-12, 28-32-13, 28-32-14, 28-32-15, 28-32-17, 28-32-18, 28-32-19, 28-32-20, 28-32-21, 28-32-21.1, 38-08-11, 38-08-13, 38-08-14, subsection 3 of section 38-14.1-30, and subsection 3 of section 43-23-11.1 of the North Dakota Century Code, relating to administrative practices and procedures; to repeal section 28-32-10 of the North Dakota Century Code, relating to proceedings when subpoenas are disobeyed; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-18.1-18 of the North Dakota Century Code is amended and reenacted as follows:

3. The proceedings authorized or required by subsections 1 and 2 must be in strict conformity with ~~sections 28-32-04 through 28-32-14 and rules of practice that are issued by the board and that are not inconsistent with said statutes~~ chapter 28-32, any rules adopted under chapter 28-32, and any other rules of administrative practice or procedure adopted by the board.

\* SECTION 2. AMENDMENT. Subsection 2 of section 15-47-38 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The school board of any school district contemplating discharging a teacher for cause prior to the expiration of the term of the teacher's contract shall notify the teacher in writing of that fact at least ten days prior to the date of contemplated discharge. The teacher ~~shall~~ must be informed in writing of the time and place for a special meeting of the school board to be held on the question of the teacher's discharge prior to a final decision on the matter. The teacher ~~shall~~ must also be informed in writing of ~~his~~ the right to demand a specification of the reasons for discharge, which must, upon receipt of the demand of the teacher, be furnished not less than five days prior to the meeting to be held on the question of the teacher's discharge. The reasons ~~shall~~ must be sufficient to justify the contemplated action of the board and ~~shall~~ may not be frivolous or arbitrary. At the meeting with the board, if the

\* NOTE: Section 15-47-38 was also amended by section 1 of House Bill No. 1249, chapter 198.



teacher has informed the board in writing at least two days prior thereto that ~~he~~ the teacher will contest the charges brought against ~~him~~ the teacher, the board must sustain the charges with evidence produced at the hearing with witnesses who ~~shall be~~ are subject to cross-examination by the teacher or ~~his~~ the teacher's representative. A witness, if a minor, ~~shall~~ must be accompanied by a parent or parents, legal guardian, or legal counsel, if requested by the minor or the minor's parents. The teacher may then produce ~~such~~ such witnesses as may be necessary to refute the charges, which witnesses ~~shall be~~ are subject to cross-examination. All procedures relative to evidence, subpoena of witnesses, oaths, record of testimony, decision, rehearing, appeals, certification of record, scope and procedure for appeals, ~~and~~ and appeals to the supreme court ~~shall~~, and other administrative procedures must be conducted in accordance with the provisions of ~~sections 28-32-06, 28-32-07, 28-32-09, 28-32-10, 28-32-11, 28-32-12, 28-32-13, 28-32-14, 28-32-15, 28-32-16, 28-32-17, 28-32-18, 28-32-19, 28-32-20, and 28-32-21~~ chapter 28-32. The meeting ~~shall~~ must be an executive session of the board unless both the school board and the teacher requesting the meeting shall agree that it ~~shall~~ is to be open to other persons or the public. The teacher may be represented at the meeting by two representatives of ~~his~~ the teacher's own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at ~~such~~ the executive session. If the teacher so requests ~~he shall be granted,~~ the board must grant a continuance of not to exceed seven days ~~by the board unless for~~ is otherwise shown. No cause of action for libel or slander ~~shall~~ may be brought for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section.

SECTION 3. Five new subsections to section 28-32-01 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.

"Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

"Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.

SECTION 4. AMENDMENT. Subsection 5 of section 28-32-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A rule is invalid unless adopted in substantial compliance with section 28-32-02. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. An action to contest the validity of a rule on the grounds of noncompliance with section 28-32-02 must be commenced within two years of the effective date of the rule.

SECTION 5. AMENDMENT. Section 28-32-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-05. Rules of practice or procedure - Complaint - Notice of hearing - Filing and service Contested case proceedings - Emergency proceedings - Other proceedings. The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. a. The For contested cases involving a complaint and a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
2. b. Upon filing of the When a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint and a notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for a hearing on the complaint. Unless a statute or rule otherwise requires or specifically provides for suspension or revocation without a hearing, the administrative agency shall designate the time and place for the hearing. Service may be waived in writing by the respondent, or the parties may agree upon on a definite time and place for hearing with the consent of the agency having jurisdiction. A notice for hearing on a complaint may be served less than forty-five days before the time specified for hearing if otherwise authorized by statute. However, no administrative hearing regarding the renewal, suspension, or revocation of a license may be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing along with an affidavit,

complaint, specification of issues, or other document alleging violations upon which the license hearing is based.

- 3- c. The notice for hearing shall ~~fix~~ state the time and place for trial upon the hearing on the merits, and shall ~~complaint.~~ The notice for hearing may inform the respondent that an answer to the complaint must be served upon the complainant and agency giving the notice within twenty days after service of the complaint and notice for hearing, or the agency may deem the complaint will to be deemed admitted, and. If the respondent fails to answer as requested within twenty days after service of the complaint and notice for hearing, the agency will may enter such an order in default as the facts and law may warrant. Service by certified mail is complete as of the date of certification. If a respondent is given less than forty-five days' notice before a hearing pursuant to another statute, the notice may allow less than twenty days to answer the complaint, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the agency giving the notice at least two days before the hearing on the complaint.
- 4- d. In an emergency the agency, in its discretion, may notice a proceeding for contested case hearing upon the merits upon on a complaint by giving less than forty-five days' notice. Every party to such an emergency proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
- 5- 2. At the any contested case hearing, the respondent, applicant, appellant, or other party shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted under section 28-32-06 and section 16 of this Act.
- 6- Unless otherwise precluded by law, informal disposition may be made of any contested case, or any issue therein, by stipulation, agreed settlement, consent order, or default subject to agency approval.
- 7- 3. a. If the nature of the administrative action does not involve a complaint and a specific-named respondents respondent or is not a contested case, the above rules shall provisions of subsection 1 of this section do not apply. Unless specific provision for notice is otherwise provided for in this code or the rules of the agency, public notice of the hearing shall be given by publication in the official newspaper in the county or counties in which the subject matter involved is located. All rules must provide for at least fourteen days' notice before the hearing except in cases of emergency.
- b. An administrative agency may adopt rules establishing practices or procedures for proceedings which do not involve a complaint and a specific-minded respondent or which are not contested cases, including agency hearings on applications seeking some right, privilege, or authorization from an agency, or appeals to the agency of some other agency action. All noncontested case proceedings or proceedings which do not involve a

complaint and a specific-named respondent must comply with another statute or rules of practice or procedure adopted pursuant to statute by an administrative agency. Notice pursuant to a rule must provide for at least fifteen days' notice before the hearing except in cases of emergency or when a shorter notice period is necessary to comply with the requirements of federal statutes, rules, or standards.

SECTION 6. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Informal disposition. Unless otherwise prohibited by statute or rule, informal disposition may be made of any contested case, noncontested case, or other administrative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative hearing from one type of proceeding to another type of proceeding.

SECTION 7. AMENDMENT. Section 28-32-06 of the North Dakota Century Code is amended and reenacted as follows:

28-32-06. Evidence to be considered by agency - Official notice.

1. The admissibility of evidence in any proceeding before an administrative agency shall be determined, insofar as circumstances will permit, in accordance with the practice in the district court North Dakota Rules of Evidence. An administrative agency, or any person conducting an investigation or hearing proceedings for it, may waive application of the usual common law or statutory North Dakota Rules of Evidence if such a waiver is necessary to ascertain the substantial rights of all the parties a party to the proceeding, but only relevant evidence of probative value shall be accepted admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except such as shall have that which has been offered, admitted, and made a part of the official record of the hearing proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
2. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency or any person conducting an investigation or proceeding for it may exclude objectionable evidence. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
3. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty

witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.

4. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.
5. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

SECTION 8. AMENDMENT. Section 28-32-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-07. Consideration of information not presented at a formal hearing. ~~If an~~ An administrative agency ~~desires to~~ may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by such the agency, in addition to the evidence presented at any formal hearing, ~~it.~~ It may do so after first transmitting a copy of such the information or evidence or an abstract thereof to each party of record in the proceeding, ~~and after affording.~~ The agency must afford each such party, upon written request, an opportunity to examine such the information or evidence and to present its own information or evidence ~~in connection therewith~~ and to cross-examine the person furnishing such the information ~~at a~~ or evidence. Any further ~~public~~ testimony that is necessary shall be taken at a hearing to be called and held upon at least ten days' notice given by registered personal service or certified mail. ~~Nothing contained in this section prevents any administrative agency from taking notice of any fact or facts set forth in its duly adopted rules or any facts which are judicially noticed by the courts of this state.~~ This section also applies to information officially noticed after the hearing when the issuance of any initial or final order is based in whole or in part on the facts or material noticed.

SECTION 9. AMENDMENT. Section 28-32-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Investigations - Hearings - Specifications of any issues to be furnished by agency - Costs of investigation.

1. An administrative agency may hold investigatory hearings to which the provisions of subsections 1 and 2 of section 28-32-05 and any rules adopted establishing practices or procedures for a contested or noncontested case proceeding do not apply. An administrative agency may adopt rules of practice or procedure for investigatory hearings. No investigatory hearing may be held except pursuant to statute or rules of practice or procedure adopted by an agency. No investigatory hearing may be held unless the agency gives at least five days' notice to all parties involved in the hearing.
2. Whenever an administrative agency, pursuant to authority conferred upon it by law, institutes an investigation upon its own motion or upon the claim or request of any person, without the filing of a specified complaint, or holds any contested case hearing or makes any independent investigation upon its own motion or the claim or

request of any person, without the filing of a specified complaint, no decision final order may be made issued by the agency until all parties in interest have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity has been afforded to such all parties to present evidence and to be heard upon the precise issues so specified pursuant to notice being issued as required by section 28-32-05, unless the final order is issued pursuant to informal disposition in accordance with section 6 of this Act. The director of the workers compensation bureau may make initial determinations without giving the notice provided by this section, but the director is subject to the requirements of section 28-32-13.

3. An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of a hearing or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this subsection, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are hereby appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.

SECTION 10. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer.
2. Any hearing officer is subject to disqualification for good cause shown.
3. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
4. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.
5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:
  - a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;
  - b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;

- c. A supervising hearings officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearings officers; or
  - d. The governor, in all other cases.
6. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.
  7. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule, and to otherwise effect an orderly hearing. If a procedural hearing officer is designated the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

SECTION 11. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Intervention. An administrative agency may grant intervention in an administrative proceeding to promote the interest of justice if intervention will not impair the orderly and prompt conduct of the proceedings and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an administrative proceeding.

SECTION 12. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Prehearing conference. Prior to a hearing, an administrative agency may conduct a prehearing conference after giving reasonable notice to all parties and other interested persons. A prehearing conference may be conducted in total or in part by making use of telephone, fax services, television, or other electronic means, as long as such use does not substantially prejudice or infringe on the rights and interests of any party. An administrative agency may adopt rules regarding the availability of, notice of, and procedures for prehearing conferences.

SECTION 13. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Default.

1. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case administrative proceeding, the agency may serve upon all parties

written notice of default and a default order, including a statement of the grounds for default.

2. Within seven days after service of the default notice, order, and grounds, the party against whom default was ordered may file a written motion requesting that the default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this section, or at the time of issuing notice and the default order, the agency may adjourn the proceedings or conduct them without the participation of the party against whom a default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. If an agency conducts further proceedings necessary to complete the administrative action without the participation of a party in default, it shall determine all the issues involved, including those affecting the defaulting party.

SECTION 14. AMENDMENT. Section 28-32-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-09. Subpoena and attendance of witnesses Subpoenas - Discovery - Protective orders. Any officer, examiner, chairman, or acting chairman of any administrative agency, upon request of any party to a hearing conducted by it, or upon his own motion on behalf of the agency, shall require by subpoena the attendance and testimony of witnesses and the production of the documents and other objects described in such subpoena at such hearing or proceeding, and the cost of serving such subpoena shall be paid by the person or agency requesting it. A subpoena to compel a witness to produce documentary evidence will be issued to a party other than the agency only upon petition showing general relevance and reasonable scope of the evidence sought, which petition must also specify with particularity the books, papers, or documents desired. The deposition of a witness or party in any proceeding before an agency may be taken in the same manner and on the same notice as in a civil action pending in the district court. Interrogatories may be sent to any witness or party in any proceeding in the same manner and on the same notice as in an action pending in the district court.

1. Any hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure.
2. Any hearing officer may require, upon the request of any party to the proceedings conducted by the agency, or upon the agency's or the hearing officer's own motion on behalf of the agency, the attendance and testimony of witnesses and the production of documents and other objects described in a subpoena at a hearing or other part of the proceedings. The cost of issuing and serving a subpoena must be paid by the person or agency requesting it. A party, except an administrative agency, must first show general relevance and reasonable scope of the evidence sought, by written petition, and obtain the written approval of the agency or the person presiding, before a subpoena to compel a witness to produce documentary evidence will be issued for the party.
3. The deposition of a witness or any party in proceedings before an agency may be taken in accordance with the North Dakota Rules of Civil Procedure.



4. Interrogatories and requests for production of documents may be sent to any witness or party in proceedings before an agency in accordance with the North Dakota Rules of Civil Procedure.
5. A party, ~~other than the~~ except an administrative agency, must first show good cause, by written petition, and obtain the written approval of the agency or the presiding hearing officer, before undertaking discovery proceedings, including depositions and interrogatories.
6. Any witness who is subpoenaed under the provisions of this section and who appears at ~~the~~ a hearing or other proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court, ~~and such.~~ Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears ~~or his deposition is taken.~~ Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
7. 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.

SECTION 15. AMENDMENT. Section 28-32-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-11. Administration of oaths - Parties to be advised of perjury provisions. The officer, special examiner, chairman, or acting chairman of an administrative agency before which a Any hearing officer in an administrative proceeding or hearing is held has the power to examine witnesses and records and to administer oaths to witnesses. At the time the officer conducting the proceeding or hearing person presiding administers the oath to a witness, the officer person shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

SECTION 16. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Procedure at hearing. The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted in total or in part by making use of telephone, television, fax services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see

the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

SECTION 17. AMENDMENT. Section 28-32-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-12. Record to be made of testimony Agency to make record. A An administrative agency shall make a record ~~shall be made~~ of all testimony adduced, written statements, documents, exhibits, and other evidence presented at any hearing before an administrative agency contested case proceeding, noncontested case proceeding, or other administrative proceeding heard by it. Such Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence and exhibits produced presented at any hearing proceeding before the administrative agency shall be filed with the agency concerned. A transcript of the evidence taken by or copy of the record of any proceeding before an administrative agency shall, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request therefor, at submitted to the agency and upon payment of a uniform charge to be set by the agency, and such transcript. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

SECTION 18. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Ex parte communications.

1. Except as provided in subsection 2 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in a contested case proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending,

- with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. If, before being assigned, designated, or appointed to preside in a contested case proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 5.
  5. An agency head or hearing officer in a contested case proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
  6. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in a contested case proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
  7. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
  8. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in contested cases.

SECTION 19. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of a contested case proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the

investigatory or prehearing stage of a contested case proceeding may serve as hearing officer.

3. Any other person may serve as hearing officer in a contested case hearing, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same contested case proceeding, unless a party demonstrates grounds for disqualification.

SECTION 20. AMENDMENT. Section 28-32-13 of the North Dakota Century Code is amended and reenacted as follows:

28-32-13. Findings of fact, conclusions of law, and decision order of agency - Notice.

1. Within thirty days after the evidence has been received, briefs filed, and arguments closed in a proceeding before an administrative agency, or as soon thereafter as possible, the agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law, and the decision order of the agency based upon such its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order.
3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue a recommended order which becomes final unless specifically amended or rejected by the agency head. The agency head may adopt a recommended order as the final order. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency.
4. The agency shall must give notice of its decision or determination an order issued in any proceeding heard by it by delivering a copy of such decision or determination the order, and the findings and conclusions upon which it is based, to all the parties to the proceeding either personally or by registered or certified mail, and if such. If notice is given by registered or certified mail, the notice shall be deemed given as of the date of the registry or certification. Pursuant to agency rule, in circumstances requiring it, an agency may give notice of an order by mailing the order, and the findings and conclusions upon which it is based, to all the parties by regular mail, provided it files an affidavit of service by mail indicating upon whom the order was served.

SECTION 21. AMENDMENT. Section 28-32-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-14. Petition for rehearing reconsideration.

1. Any party before an administrative agency who is aggrieved by the decision thereof final order of the agency, within fifteen days after a copy of such decision has been mailed or delivered to such party by the administrative agency notice has been given as required by section 28-32-13, may request a rehearing by such agency; provided, however, that any file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking administrative or judicial review.
2. Any party appearing before the workers compensation bureau may have thirty days within which to request a rehearing file a petition for reconsideration.
3. ~~He shall~~ The party must submit with the request petition for rehearing reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding, and such request. The petition must also state whether a rehearing is requested. The petition and any statement shall constitute be considered a part of the record in the proceeding.
4. The administrative agency may deny such request the petition for rehearing reconsideration or may grant the same petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by the same person or persons presiding previously at hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 4 of section 28-32-13.
5. This section, ~~however, shall~~ does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to any such the agency by any law of this state statute.

SECTION 22. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Effectiveness of orders. Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-13 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude an agency from taking emergency action to protect the public health, safety, or welfare, as authorized by statute.

SECTION 23. AMENDMENT. Section 28-32-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-15. Appeal from determination of agency - Time to appeal - How appeal taken.

1. Any party to any proceeding heard by an administrative agency, except in cases where the ~~decision order~~ of the administrative agency is declared final by any other statute, may appeal from ~~such decision the order~~ within thirty days after notice ~~thereof~~ of the order has been given, ~~or if~~ as required by section 28-32-13. ~~If a rehearing reconsideration has been requested as provided herein and denied, within thirty days after notice of such denial has been mailed to him in section 28-32-14, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-13 and 28-32-14. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.~~
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3. a. ~~Such~~ The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county ~~wherein in which~~ the hearing or a part thereof was held. ~~If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders or decisions and orders or decisions substantially affecting the rights of parties are appealable. A procedural order made by an administrative agency during the while a proceeding is pending of a hearing before it shall not be deemed is not a final order nor an order affecting a substantial right.~~
- b. ~~The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.~~
4. ~~Such~~ An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before ~~such the~~ administrative agency, and by filing the notice of appeal and specifications of error together with proof of service ~~thereof~~ of the notice of appeal, and the undertaking ~~herein~~ required by this section, with the clerk of the district court to which ~~such the~~ appeal is taken. ~~In an appeal of an agency's rulemaking action, only the administrative agency concerned, the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.~~

5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named ~~respondents~~, except that in as appellees. A notice of appeal of agency actions taken pursuant to section 28-32-02, need not name all persons participating in the rulemaking proceeding need not be named respondents as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency action taken pursuant to section 28-32-02, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. An undertaking must be executed by the appellant, with sufficient surety to be approved by the judge of the district court, conditioned that upon conditions requiring the appellant will to prosecute such the appeal without delay and will to pay all costs adjudged against him the appellant in the district court. Such The undertaking shall must be made to the state of North Dakota and may be enforced by the agency concerned for and on behalf of the state as obligee.

SECTION 24. AMENDMENT. Section 28-32-17 of the North Dakota Century Code is amended and reenacted as follows:

28-32-17. Agency to maintain and certify record on appeal.

1. An administrative agency shall maintain an official record of each contested case proceeding, noncontested case proceeding, or other administrative proceeding heard by it.
2. Within thirty days, or such a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after the deposit payment by the appellant of the estimated cost of a transcript of the evidence preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or such an abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the agency, and the decision of the administrative agency in such proceeding. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-15, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the general fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing and

- filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.
3. The cost of preparation and filing of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.
  4. The agency record of the proceedings, as applicable, must consist of only the following:
    - a. The complaint, answer, and other initial pleadings or documents.
    - b. Notices of all proceedings.
    - c. Any prehearing notices, transcripts, documents, or orders.
    - d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
    - e. A statement of matters officially noticed.
    - f. Offers of proof and objections and rulings thereon.
    - g. Proposed findings, requested orders, and exceptions.
    - h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
    - i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on consideration.
    - j. Any information considered pursuant to section 28-32-07.
    - k. Matters placed on the record after an ex parte communication.
    - l. Any other document that the agency believes is relevant to the appeal.
    - m. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.
  5. Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for administrative agency action and judicial review of an administrative agency action.



6. The record on review of agency rulemaking action, as applicable, must consist of only the following:
  - a. All agency notices concerning purposed rulemaking.
  - b. A copy of the proposed rule upon which written and oral submissions were made.
  - c. A copy of the rule as submitted for publication.
  - d. Any opinion letters by the attorney general as to a rule's legality.
  - e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.
  - f. The regulatory analysis of a proposed rule.
  - g. The transcript of any oral hearing on a proposed rule.
  - h. All written submissions made to the agency on a proposed rule.
  - i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.
  - j. Any other document that the agency believes is relevant to the appeal.
  - k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.
7. If the notice of appeal shall specify specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the evidence submitted at the hearing before such agency shall be omitted agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant.
8. The court may permit amendments or additions to the record thus filed by the administrative agency in order to complete the same record.

SECTION 25. AMENDMENT. Section 28-32-18 of the North Dakota Century Code is amended and reenacted as follows:

28-32-18. Consideration of additional or excluded evidence. If an application for leave to ~~adduce~~ offer additional testimony, written statements, documents, exhibits, or other evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that ~~such~~ the additional evidence is relevant and material and that there were reasonable grounds for the failure to ~~adduce such~~ offer the evidence in the hearing or proceeding ~~had before the administrative agency~~, or that ~~such~~ the evidence is relevant and material to the issues involved and was rejected or excluded by the

agency, the court may order that ~~such~~ the additional evidence be taken, heard, and considered by ~~such~~ the agency on ~~such~~ terms and conditions as the court may deem proper. After considering ~~such~~ the additional evidence, the administrative agency may amend or ~~modify~~ reject its findings of fact, conclusions of law, and ~~decision~~ order, and shall file with the court a transcript of ~~such~~ the additional evidence together with its new or ~~modified~~ ~~amended~~ findings of fact, conclusions of law, and ~~decision~~ order, if any, which constitute a part of the record with the court.

SECTION 26. AMENDMENT. Section 28-32-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-19. Scope of and procedure on appeal from determination of administrative agency. ~~The A judge of the district court shall try and hear must review an appeal from the determination of an administrative agency without a jury and the evidence considered by the court shall be confined to based only on the record filed with the court. If additional testimony is taken by the administrative agency or if additional findings of fact, conclusions of law, or a new decision shall be filed pursuant to section 28-32-18, such evidence, findings, conclusions, and decision shall constitute a part of the record filed with the court. After such a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall must affirm the decision order of the agency unless it shall find that any of the following are present:~~

1. The ~~decision or determination~~ order is not in accordance with the law.
2. The ~~decision~~ order is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions ~~and decision~~ of law and order of the agency are not supported by its findings of fact.

If the ~~decision~~ order of the agency is not affirmed by the court, it shall be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the ~~decision~~ order of the court.

SECTION 27. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Scope of and procedure on appeal from agency rulemaking. A judge of the district court shall review an appeal from an administrative agency's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the

agency's rulemaking action unless it finds that any of the following are present:

1. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
2. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
3. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's authority to adopt.
4. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

If the rulemaking action of the agency is not affirmed by the court, it must be remanded to the agency for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency must be declared invalid for reasons stated by the court.

SECTION 28. AMENDMENT. Section 28-32-20 of the North Dakota Century Code is amended and reenacted as follows:

28-32-20. An appeal from a determination of an administrative agency does not stay proceedings Appeal - Stay of proceedings. An appeal from a determination or decision an order or the rulemaking action of an administrative agency shall not stay the enforcement of such decision or determination the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, shall order a stay. The court may impose such terms and conditions for a stay of the enforcement of the determination or decision appealed from as it shall deem proper order or for a stay in the effect of a published rule. The provisions of this section do not prohibit the operation of an automatic stay upon the enforcement of an administrative order as may be required by another statute.

SECTION 29. AMENDMENT. Section 28-32-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-21. Review in supreme court. The judgment of the district court in an appeal from a decision an order or rulemaking action of an administrative agency may be reviewed in the supreme court on appeal in the same manner as provided in section 28-32-19 or section 27 of this Act, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency, the agency may not be required to pay a docket fee or file a bond for costs or equivalent security.

SECTION 30. AMENDMENT. Section 28-32-21.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-21.1. Actions against administrative agencies - Attorneys' fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorneys' fees and costs if the court finds in favor of that party and determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or civil judicial proceeding brought by a person party not an administrative agency against an administrative agency for judicial review of a final agency order or decision, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted pursuant to this chapter by an agency as a result of the rulemaking action being appealed.
3. Any attorneys' fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, decision rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorneys' fees from any award if the court finds the administrative agency's action was substantially justified or that special circumstances exist which make the award of all or a portion of the attorneys' fees unjust.
4. Nothing in this section shall be construed to alter the rights of a party to collect any fees under other applicable law.

SECTION 31. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Witnesses - Immunity. If any person objects to testifying or producing evidence, documentary or otherwise, at any proceeding before an administrative agency, claiming a privilege against self-incrimination, but is directed to testify or produce evidence pursuant to the written approval of the attorney general, that person must comply with the direction; but no testimony or evidence compelled from that person, after a valid claim of privilege against self-incrimination has been made, may be used against that person in any criminal proceeding subjecting that person to a penalty or forfeiture. No person testifying at any proceeding before an administrative agency may be exempted from prosecution and punishment for perjury or giving a false statement, or for contempt committed in answering, or failing to answer, or in producing, or in failing to produce, evidence, pursuant to direction given under this section.

SECTION 32. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Nothing in this chapter prohibits an elected official from presiding at that agency's cases, nor from deciding cases within that agency's jurisdiction.

SECTION 33. AMENDMENT. Section 38-08-11 of the North Dakota Century Code is amended and reenacted as follows:

38-08-11. Rules covering practice before commission.

1. The commission ~~shall prescribe~~ may adopt rules and regulations governing the practice and procedure before the commission, which rules shall be adopted pursuant to the provisions of chapter 28-32.
2. ~~No rule, regulation, or order, or amendment thereof, except in an emergency, may be made by the commission without a public hearing upon at least ten days' notice. The public hearing must be held at such time and place as may be prescribed by the commission, and any interested person is entitled to be heard.~~
- 3- When an emergency requiring immediate action is found to exist, the commission ~~is authorized to~~ may issue an emergency order without notice or hearing, reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency, which order is effective upon promulgation issuance. No emergency order may remain ~~effective~~ in effect for more than forty days.
- 4- 3. Any notice required by this chapter must be given at the election of the commission either by personal service in accordance with chapter 28-32 or by one publication in a newspaper of general circulation in the state capital and in a newspaper of general circulation in the county where the land affected, or some part thereof, is situated. The notice must issue in the name of the state, must be signed by the chairman or secretary of the commission, and must specify the style and number of the proceeding, the time and place of the hearing, and must briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by any officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service of summons in civil actions in the courts of the state. Proof of the service by such agent must be by the affidavit of the person making personal service.
- 5- ~~All rules, regulations, and orders issued by the commission must be in writing, must be entered in full and indexed in books to be kept by the commission for that purpose, and are public records open for inspection at all times during reasonable office hours. A copy of any rule, regulation, or order certified by any member of the commission, or its secretary, under its seal, must be received in evidence in all courts of this state with the same effect as the original.~~
- 6- 4. The commission may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the commission, the commission ~~shall promptly~~ must fix a date for a hearing ~~thereon,~~ and ~~shall cause~~ give notice of the hearing to be given. The hearing must be held ~~without undue delay after the filing of the petition.~~ The . Upon the filing of a petition of any interested party, the commission must enter its order within thirty days after the a hearing. A copy of the any order of the commission must be forwarded by mail mailed to those all the persons filing written appearances at the hearing.

SECTION 34. AMENDMENT. Section 38-08-13 of the North Dakota Century Code is amended and reenacted as follows:

38-08-13. Person adversely affected may apply for rehearing reconsideration. Any person adversely affected by any order of the commission may within thirty days after the entry of such order file in writing a petition for rehearing reconsideration in accordance with the procedures of section 28-32-14. The petition must state with particularity the evidence, facts, points of law, or newly discovered evidence which in the opinion of the petitioner indicate the order of the commission is erroneous. The commission shall grant or deny any such petition in whole or in part within thirty days after the same is filed. If a petition for rehearing is granted, the rehearing must be held without undue delay in accordance with the provisions of section 28-32-14 or rules adopted pursuant to it.

SECTION 35. AMENDMENT. Section 38-08-14 of the North Dakota Century Code is amended and reenacted as follows:

38-08-14. Person adversely affected may appeal to district court - Procedure of appeal.

1. Any person adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from such the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal must may be taken to the district court for any county in or under which any part of the affected property is located. Notice of appeal must be filed by such person with the commission within thirty days after the entry of the order complained of by the appellant, or in the event a petition for rehearing has been filed as provided herein within thirty days following the entry of the order either sustaining or overruling the original order, or within thirty days after the day upon which a petition for rehearing is denied. A copy of the notice of appeal must be filed with the district court for the county in which the appeal is taken at the same time the notice of appeal is filed with the commission. The notice of appeal must identify the order and the grounds of appeal, and reasonably specify that portion of the record which the appellant desires included in the transcript upon appeal. Immediately upon the filing of the notice of appeal the commission shall certify to the appellant the estimated cost of preparing the transcript of appeal of the proceedings upon which the order complained of was entered. The amount of the estimated cost must be deposited with the commission within ten days after the mailing of the certification of the costs to the appellant. Upon the deposit of the costs the commission shall prepare and certify under its seal the transcript. The transcript must be delivered to the district court for the county in which the appeal is taken within sixty days after the filing of the notice of appeal. A copy of the transcript must be delivered to the appellant, or his designated attorney, upon deposit of the cost of preparing same with the commission. Fees charged and collected for the transcript of evidence may be paid to the person preparing such transcript.
2. An appeal must be perfected by filing the notice of appeal with the commission within the specified thirty-day period. The appeal may be dismissed by the district court for failure of the appellant to make the required cost deposit unless for good cause shown the time

~~is extended by order of the district court. If the district court deems the transcript insufficient, the court may return the transcript to the commission for proper additions, and thereafter assess such further costs against the appellant as the court in its discretion deems sufficient.~~

- ~~3- 2.~~ At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of ~~the~~ a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section 28-32-20.
- ~~4- 3.~~ The district court shall, insofar as is practicable, give precedence to appeals from orders of the commission. Upon the appeal of such an order the district court shall review the proceedings before the commission as disclosed by the transcript upon appeal, and thereafter enter its judgment affirming or reversing the order appealed. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and conclusions are sustained by the law and by substantial and credible evidence.
- ~~5-~~ No court other than the district court, or the supreme court upon appeal from the final judgment or order entered in the district court, has jurisdiction to review the rules, regulations, or orders of the commission, or to enjoin or otherwise interfere with the commission in the exercise of the authority conferred upon it by this chapter.

SECTION 36. AMENDMENT. Subsection 3 of section 38-14.1-30 of the North Dakota Century Code is amended and reenacted as follows:

3. Administrative hearings pursuant to this section must be conducted in accordance with the provisions of chapter 28-32 and the following procedures:
- a. A hearing must be held within thirty days of a request for a formal hearing under subsection 1 or the issuance of an order to show cause under subsection 2.
  - b. The commission shall cause ~~such an~~ investigation to be made as it deems appropriate in connection with any hearing under this section. Evidence taken at a hearing under this section held in connection with a permit application ruling under section 38-14.1-20 may include, but is not ~~be~~ limited to, site inspections of the land to be affected and other surface coal

mining operations carried on by the applicant for a permit in the general vicinity of the proposed operation.

- c. Hearings held pursuant to this section ~~must be conducted in accordance with appropriate procedures in chapter 28-32 and are subject to judicial review in accordance with that the provisions of chapter 28-32. However, any time Any requirements or other, procedural requirements or otherwise, specifically imposed under this section which are in conflict with requirements in the provisions of chapter 28-32 shall supersede the provisions of chapter 28-32.~~
- d. All parties to any informal conference held in reference to a permit application or application for release of performance bond under section 38-14.1-19, and all persons who submitted comments or written objections to the application for release of performance bond or the permit application under sections 38-14.1-17 and 38-14.1-18 respectively, and the permittee and other interested parties in hearings to review enforcement actions taken pursuant to section 38-14.1-28 must be given written notice of the date, place, and time of the hearing at least twenty days prior to ~~such the hearing under this section. In case of an emergency, such the notification period may be shortened, but in no event may notice be given less than five days prior to the hearing. Time periods as provided in section 28-32-05 for any pleadings or filing of other papers before the commission in connection with the hearing must be adjusted to accommodate time periods set by this subdivision.~~
- e. In addition to any notice required by chapter 28-32, notice of hearings under this section must be published in the official newspaper of each county in which the subject matter of the hearing is located and in other daily newspapers of general circulation in the general vicinity of such counties, at least once a week for two successive weeks prior to the hearing. In case of an emergency, ~~such the publication period may be shortened, but in no event may notice be published less than five days prior to the hearing in daily newspapers of general circulation in the general locality of the subject matter involved.~~
- f. No person, except a commissioner, who presides at any informal conference under section 38-14.1-19 in reference to a permit application may preside at a formal administrative hearing under this section or participate in making the final administrative decision pursuant to ~~section 28-32-13 chapter 28-32.~~
- g. All final orders of the commission under this section, except those issued under subsection 4, must be issued pursuant to the following procedures:
- (1) Whenever a formal hearing has been held, the commission shall issue a written decision order pursuant to ~~section 28-32-13 chapter 28-32,~~ provided that the ~~findings, conclusion, and~~ decision must be issued within thirty days



after the hearing. The commission shall have no discretion to increase such time period.

- (2) In the event that no one with standing to request an administrative hearing under subsection 1 ~~avails himself of the right to~~ requests such a hearing as provided therein, the commission shall establish whether or not a permit should be granted or suspended or revoked; or, in enforcement proceedings, whether the violation has in fact occurred; or, in connection with an application for release of a bond, whether such the application should be approved or denied, in whole or in part; and shall issue a final decision order as appropriate pursuant to regulations established rules adopted by the commission.

SECTION 37. AMENDMENT. Subsection 3 of section 43-23-11.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. No license may be revoked or suspended, no monetary fine imposed, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, or reprimand. The provisions of chapter 28-32, ~~including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals,~~ apply to and govern all proceedings for suspension, revocation, fine, or reprimand of licenses or licensees, ~~except where inconsistent with this chapter or rules of the commission.~~

SECTION 38. REPEAL. Section 28-32-10 of the North Dakota Century Code is repealed.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 343

HOUSE BILL NO. 1024  
(Legislative Council)  
(Interim Administrative Rules Committee)

### ADMINISTRATIVE RULE DEFINED

AN ACT to amend and reenact subsection 6 of section 28-32-01 of the North Dakota Century Code, relating to the definition of rule as used in the Administrative Agencies Practice Act, North Dakota Century Code chapter 28-32.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Rule" means the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the amendment, repeal, or suspension of an existing rule. The term does not include:
  - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
  - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
    - (1) Enable law violators to avoid detection;
    - (2) Facilitate disregard of requirements imposed by law; or
    - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
  - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
  - d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
  - e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately

- indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
  - g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
  - h. An agency budget.
  - i. An opinion of the attorney general.
  - j. A rule adopted by an agency selection committee under section 54-44.7-03.
  - k. ~~Interpretive statements; general statements of policy; or statements of agency organization; procedure; or practice.~~
  - l. ~~Guidelines; manuals; brochures; pamphlets; and similar statements of policy intended to advise or guide the agency or the public concerning activities of the agency which are otherwise prescribed by rule or statute.~~
  - m. ~~Statements of policy intended to implement federal statutes; rules; or requirements with which compliance by the agency is necessary to secure appropriated revenues; or to avoid the loss of otherwise available federal revenues.~~
  - n. A contract. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is merely explanatory and not intended to have the force and effect of law.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 344

HOUSE BILL NO. 1025  
(Legislative Council)  
(Interim Administrative Rules Committee)

**ADMINISTRATIVE RULE NOTICE**

AN ACT to amend and reenact subsections 4 and 5 of section 28-32-02 of the North Dakota Century Code, relating to public comment on proposed administrative rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 28-32-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short explanation of the purpose of the proposed rule, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent and, in the case of a substantive rule, the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The agency shall mail a copy of the notice must be mailed to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the first publication of the notice or the date of filing with the office of the date the legislative council mails copies of an agency's notice and the end of the period in which written or oral data, views, or arguments concerning the proposed rules will be received. If no request has been made to the legislative council for copies of the notices, the thirty-day period begins on the fifth business day of the month in which the notices would have been mailed if a request had been made. If a request has been made to the legislative council for copies of the notices, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on or before the fifth business day of each month.
5. The legislative council shall establish a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for ~~the actual cost of~~ providing copies of the filings.

Approved March 7, 1991  
Filed March 7, 1991

# JUDICIAL PROCEDURE, CRIMINAL

## CHAPTER 345

SENATE BILL NO. 2495  
(Tennefos, Holmberg)

### FOREIGN PEACE OFFICERS

AN ACT to create and enact a new section to chapter 29-06 of the North Dakota Century Code, relating to foreign peace officers providing transportation for law enforcement purposes; and to amend and reenact sections 29-06-05, 29-06-06, and 29-06-07 of the North Dakota Century Code, relating to foreign officers in fresh pursuit; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-06-05 of the North Dakota Century Code is amended and reenacted as follows:

29-06-05. Foreign peace officer in fresh pursuit may arrest in state. Any member of a duly organized state, county, or municipal peace law enforcement unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit of a person in order to arrest ~~him~~ the person on the ground that ~~he~~ the person is believed to have committed a felony, misdemeanor, or traffic violation in such other state, shall have the same authority to arrest and hold such person in custody as has any member of any duly organized state, county, or municipal peace law enforcement unit of this state to arrest and hold in custody a person on the ground that ~~he~~ the person is believed to have committed a felony, misdemeanor, or traffic violation in this state.

SECTION 2. A new section to chapter 29-06 of the North Dakota Century Code is created and enacted as follows:

Foreign officer providing transportation for law enforcement purposes. Any member of a duly organized state, county, or municipal law enforcement unit of another state of the United States who enters this state to perform an assigned duty of transporting persons in legal custody for law enforcement purposes has the same authority to transport persons in legal custody as any member of any duly organized state, county, or municipal law enforcement unit of this state if a reciprocal right to transport persons in legal custody is extended to North Dakota peace officers in the peace officer's state or local jurisdiction.

SECTION 3. AMENDMENT. Section 29-06-06 of the North Dakota Century Code is amended and reenacted as follows:

29-06-06. Hearing before local magistrate and order thereon.

1. If an arrest is made in this state by an officer of another state in accordance with the provisions of section 29-06-05, he, without unnecessary delay, shall take the person arrested before a

magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the governor of this state, or shall admit him to bail for such purpose. If the magistrate determines that the arrest was unlawful he shall discharge the person arrested.

2. Notwithstanding the provisions of chapter 29-30.3 and subsection 1, a person arrested for a misdemeanor or traffic violation pursuant to section 29-06-05 may voluntarily return to the foreign state without a hearing before a magistrate.

SECTION 4. AMENDMENT. Section 29-06-07 of the North Dakota Century Code is amended and reenacted as follows:

29-06-07. Definition of fresh pursuit. As used in section 29-06-05, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a ~~felony~~ or who is reasonably suspected of having committed a felony, misdemeanor, or traffic violation. It also shall include the pursuit of a person suspected of having committed a supposed felony, misdemeanor, or traffic violation, though no felony, misdemeanor, or traffic violation has been actually committed, if there is reasonable ground for believing that a felony, misdemeanor, or traffic violation has been committed. Fresh pursuit, as the term is used in this chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 346

SENATE BILL NO. 2214  
(Committee on Judiciary)  
(At the request of the Attorney General)

### FORFEITABLE PROPERTY

AN ACT to create and enact a new chapter to title 29 of the North Dakota Century Code, relating to proceedings for the forfeiture and disposition of property obtained by law enforcement agencies; to amend and reenact subdivision c of subsection 5 of section 12.1-28-02 of the North Dakota Century Code, relating to the forfeiture of gambling devices; and to repeal chapter 29-31 of the North Dakota Century Code, relating to confiscation of equipment used in the commission of a crime.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 5 of section 12.1-28-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under ~~chapter 19-03~~ section 2 of this Act.

SECTION 2. A new chapter to title 29 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Forfeitable property" means any of the following:
  - a. Property that is illegally possessed or is contraband.
  - b. Property that has been used or is intended to be used to facilitate the commission of a criminal offense or to avoid detection or apprehension of a person committing a criminal offense. For purposes of this subdivision, property does not include a residence or other real estate where a coowner, whether by joint tenancy, tenancy in common, or tenancy by the entirety, of the residence or other real estate, has not been convicted of the criminal offense that was facilitated by the use or intended use of the property.
  - c. Property that is acquired as or from the proceeds of a criminal offense.

- d. Property offered or given to another as an inducement for the commission of a criminal offense.
  - e. A vehicle or other means of transportation used in the commission of a felony, the escape from the scene of the commission of a felony, or in the transportation of property that is the subject matter of a felony.
  - f. Personal property used in the theft of livestock or the transportation of stolen livestock.
2. "Seized property" means property taken or held by any law enforcement agency in the course of that agency's official duties with or without the consent of the person, if any, who had possession or a right to possession of the property at the time it was taken into custody.
3. "Seizing agency" is the law enforcement agency that has taken possession of, or seized, property in the course of that agency's official duties.

Disposition of nonforfeitable property. Seized property that is not required as evidence or for use in an investigation may be returned to the owner without the requirement of a hearing, if the person's possession of the property is not prohibited by law, the property is not forfeitable property, and there is no forfeiture proceeding filed on behalf of the seizing agency. The seizing agency shall send notice by regular mail, if the value of the property is less than fifty dollars, or certified mail, if the value of the property is equal to or greater than fifty dollars, to the last known address of any person having an ownership or possessory right in the property stating that the property is released and must be claimed within thirty days. Notice is deemed to have been made upon the mailing of the notice. The notice must state that if no written claim for the property is made upon the seizing agency within thirty days after the mailing of the notice, the property will be deemed abandoned and disposed of accordingly. If there is more than one party who may assert a right to possession or ownership of the property, the seizing agency may not release the property to any party until the expiration of the date for filing claims unless all other claimants execute a written waiver. If there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of the district court and deposit the property with the court in accordance with the provisions of chapter 32-11. If no owner can be located or no claim is filed under this section, the property is deemed abandoned and the seizing agency becomes the owner of the property and may dispose of it in any reasonable manner.

Seizure of forfeitable property. Forfeitable property may be seized whenever and wherever the property is found within this state. Forfeitable property may be seized by taking custody of the property or by serving upon the person in possession of the property a notice of forfeiture and seizure. If the court finds that the forfeiture is warranted, an order transferring ownership to the seizing agency must be entered and the property must be delivered to the seizing agency for disposition as directed by the court. Property that has been seized for forfeiture, and is not already secured as evidence in a criminal case, must be safely secured or stored by the agency that caused its seizure.



Forfeiture proceedings.

1. Forfeiture is a civil proceeding not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.
2. Forfeiture proceedings brought under this chapter must be conducted in accordance with the procedures established for the forfeiture of property in sections 19-03.1-36.1 through 19-03.1-36.7.

Transfer of forfeitable property. Title to, and responsibility for, forfeitable property vests with the seizing agency at the time of the seizure. Once forfeitable property is seized, no right to the property may be transferred by anyone other than the seizing agency unless the seizure and forfeiture is declared by the court to be a nullity or as otherwise ordered by the court.

Disposition of forfeited property. When property is forfeited under this chapter, the seizing agency may:

1. Retain the property for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency.
2. Sell the forfeited property that is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale, together with any monetary funds ordered to be forfeited, must be used first for the payment of all proper costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund.
3. Dispose of the property in accordance with the order of the court if the property cannot be retained, used, or sold by the seizing agency.

Nonforfeitable interest - Purchase of forfeitable interest.

1. Property may not be forfeited under this chapter to the extent of an interest of an owner who had no part in the commission of the crime and who had no knowledge of the criminal use or intended use of the property. However, if it is established that the owner permitted the use of the property under circumstances in which a reasonable person should have inquired into the intended use of the property and that the owner failed to do so, there is a rebuttable presumption that the owner knew that the property was intended to be used in the commission of a crime.
2. Upon receipt of forfeited property, the seizing agency shall permit any owner or lienholder of record having a nonforfeitable property interest in the property the opportunity to purchase the property interest forfeited. If the owner or lienholder does not exercise the option under this subsection within sixty days of mailing of written notice to such person of such option, the option is

terminated unless the time for exercising the option is extended by the seizing agency.

3. A person having a valid, recorded lien or property interest in forfeited property, which has not been repurchased pursuant to subsection 2, must either be reimbursed to the extent of the nonforfeitable property interest or to the extent of the amount raised by the sale of the item, whichever amount is less. The sale of forfeited property must be conducted in a manner that is commercially reasonable and calculated to provide a sufficient return to cover the cost of the sale and reimburse any nonforfeitable interest. The validity of a lien or property interest is determined as of the date the property is seized. All costs and expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, must be first deducted from the sale proceeds and paid to the party incurring such costs and expenses.
4. This section does not preclude a civil suit by an owner of an interest in forfeited property against the party who, by criminal use, caused the property to become forfeited to the seizing agency.

Retention of forfeited property. If property forfeitable under this chapter is needed as evidence in a criminal proceeding, it must be retained under the control of the prosecuting attorney, or the prosecuting attorney's designee, until such time as its use as evidence is no longer required.

Disposition of forfeitable property held as evidence in criminal proceeding. Notwithstanding other provisions of this chapter, in the case of forfeitable property seized and held as evidence of the commission of a criminal offense, the court in which a criminal prosecution was commenced may issue its order, upon motion and after hearing unless waived, for disposition of the property in accordance with this chapter. Notice of the motion must be served in accordance with the rules of civil procedure upon the owner and all persons known to be claiming an interest in the property to be forfeited. The notice must be served at least twenty days before a hearing on the motion unless the time period is waived by all parties claiming an interest in the property. The motion must contain the information required in a complaint as set forth in section 19-03.1-36.3. Although no separate forfeiture proceeding is required to be instituted under this section, all other provisions of this chapter apply to proceedings commenced pursuant to this section.

Inapplicability of chapter. The provisions of this chapter do not apply to forfeiture proceedings commenced under other specific provisions of law including chapters 12.1-06.1, 19-03.1, and 20.1-10.

**SECTION 3. REPEAL.** Chapter 29-31 of the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 347

SENATE BILL NO. 2389  
(Marks, O'Connell)

### SEARCH WARRANT EXECUTION

AN ACT to amend and reenact section 29-29-08 of the North Dakota Century Code, relating to execution of a search warrant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-29-08 of the North Dakota Century Code is amended and reenacted as follows:

29-29-08. Execution of warrant - Use of force. An officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, (a) if, after notice of his the officer's authority and purpose, he be the officer is refused admittance, or (b) without notice of his the officer's authority and purpose if a district judge issuing the warrant was issued by a magistrate who is learned in the law and who has inserted a direction therein that the officer executing it shall not be required to give such notice. The district judge magistrate may so direct only upon written or recorded oral petition and proof under oath, to his the magistrate's satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

Approved April 5, 1991  
Filed April 8, 1991

# UNIFORM PROBATE CODE

## CHAPTER 348

SENATE BILL NO. 2429  
(Senators Stenehjelm, Maxson)  
(Representative Kretschmar)

### SUCCESSION FOR PROPERTY TITLE

AN ACT to amend and reenact subsection 4 of section 30.1-12-08 of the North Dakota Century Code, relating to proceedings to establish inheritance or succession of titled property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 30.1-12-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If no proceeding concerning the succession or administration of the estate has occurred personal representative of a decedent's estate has been appointed in any proceeding within three years after the decedent's death, a proceeding for formal testacy proceeding probate of a will or for adjudication of intestacy, with a request for an appointment of a personal representative, may be commenced at any time three years or more after the decedent's death for the sole purpose of establishing a devise inheritance or succession of property that the devisee or the devisee's successors and assigns possessed under the will or property that was not possessed or claimed by anyone by virtue of the decedent's title during the three-year period, and the order of the court is limited to that property in which the decedent possessed an interest at the time of death and for appointment of a personal representative to convey title to that property to the decedent's heirs or devisees. A description of the property must be included within the petition to the court. In addition to the parties specified in section 30.1-15-03, notice of a proceeding under this subsection must also be given to any person in possession of the property and to any person claiming an ownership interest in the property of whom the petitioner has actual or constructive notice.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 349

SENATE BILL NO. 2504  
(Krauter)

### ESTATE CLOSING

AN ACT to create and enact a new section to chapter 30.1-21 of the North Dakota Century Code, relating to closing decedent's estates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to section 30.1-21 of the North Dakota Century Code is created and enacted as follows:

Estate closing - Procedures. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request that the personal representative be required to show cause to the court why the estate has not been closed and the court shall order the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed, and shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such order to show cause and the date of the hearing, and invite such respondents to participate in the hearing proceedings, after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 350

SENATE BILL NO. 2399  
(Senator Mathern)  
(Representatives Oban, Larson)

### GUARDIANSHIP LAW TRANSITION

AN ACT to amend and reenact section 30.1-28-14 of the North Dakota Century Code, relating to guardianships established before July 1, 1990.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-28-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-28-14. Prior guardianships Guardianships established before July 1, 1990. Guardianships established prior to July 1, 1990, must be reviewed by the court in accordance with sections 30.1-26-01, 30.1-28-01, 30.1-28-02, 30.1-28-03, 30.1-28-04, 30.1-28-05, 30.1-28-06, 30.1-28-07, 30.1-28-08, 30.1-28-09, 30.1-28-10, 30.1-28-12, 30.1-28-12.1, and this section. Guardians and wards under such previously established guardianships must be notified by the court in writing in language reasonably understandable to them of their rights and duties under this chapter. The powers and duties of guardians and the rights and privileges of wards under guardianships established before July 1, 1990, are as provided by this chapter as it existed on June 30, 1990, and are not affected by chapter 405 of the 1989 Session Laws, except that guardians appointed before July 1, 1990, must comply with the requirements of subsections 2, 4, 5, and 8 of section 30.1-28-12.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 351

HOUSE BILL NO. 1102

(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

### NONPROBATE TRANSFERS ON DEATH

AN ACT to create and enact chapter 30.1-31 of the North Dakota Century Code, relating to nonprobate transfers on death; to amend and reenact sections 6-03-67 and 30.1-17-04 of the North Dakota Century Code, relating to protection of financial institutions and bonds of personal representatives; to repeal the present chapter 30.1-31 of the North Dakota Century Code, relating to nonprobate transfers; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-67 of the North Dakota Century Code is amended and reenacted as follows:

6-03-67. Appropriation of deposits unlawful - Exception - Liability therefor. Except as provided in sections 6-07-52 and ~~30.1-31-13~~ 30.1-31-20, it is unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part of the deposit to the payment of any debt to the association, without legal process or the consent of the depositor. Any banking association which ~~that~~ violates this section is liable to the party aggrieved for any damages caused by the violation.

SECTION 2. AMENDMENT. Section 30.1-17-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-17-04. (3-604) Bond amount - Security - Procedure - Reduction. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his ~~his~~ that person's application or petition, the person qualifying shall file a statement under oath with the court indicating his ~~his~~ that person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and ~~he~~ shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section ~~30.1-31-01~~ 30.1-31-02) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person, the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

SECTION 3. Chapter 30.1-31 of the North Dakota Century Code is created and enacted as follows:

30.1-31-01. (6-101) Nonprobate transfers on death.

1. A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

- a. Money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;
- b. Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or
- c. Any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

2. Subsection 1 does not limit rights of creditors under other laws of this state.

30.1-31-02. (6-201) Definitions. As used in sections 30.1-31-02 through 30.1-31-20:

1. "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.
2. "Agent" means a person authorized to make account transactions for a party.
3. "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.
4. "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan association, and credit union.
5. "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.



6. "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.
7. "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.
8. "P.O.D. designation" means the designation of:
  - a. A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or
  - b. A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.
9. "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.
10. "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of sections 30.1-31-02 through 30.1-31-20, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.
11. "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.
12. "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

30.1-31-03. (6-202) Limitation on scope of sections 30.1-31-02 through 30.1-31-20. Sections 30.1-31-03 through 30.1-31-20 do not apply to:

1. An account established for a partnership, joint venture, or other organization for a business purpose;
2. An account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

3. A fiduciary or trust account in which the relationship is established other than by the terms of the account.

30.1-31-04. (6-203) Types of account - Existing accounts.

1. An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to subsection 3 of section 30.1-31-09, either a single-party account or a multiple-party account may have a P.O.D. designation, an agency designation, or both.

2. An account established before, on, or after the effective date of sections 30.1-31-02 through 30.1-31-20, whether in the form prescribed in section 30.1-31-05 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a P.O.D. designation or an agency designation, within the meaning of sections 30.1-31-02 through 30.1-31-20, and is governed by sections 30.1-31-02 through 30.1-31-20.

30.1-31-05. (6-204) Forms.

1. A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of sections 30.1-31-02 through 30.1-31-20 applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM  
PARTIES [name one or more parties]:

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OWNERSHIP [select one and initial]:

--- SINGLE-PARTY ACCOUNT

--- MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [select one and initial]:

--- SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

--- SINGLE-PARTY ACCOUNT WITH P.O.D. (PAY ON DEATH)  
DESIGNATION

[name one or more beneficiaries]:

-----

At death of party, ownership passes to P.O.D. beneficiaries and is not part of party's estate.

--- MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

--- MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAY ON DEATH) DESIGNATION

[name one or more beneficiaries]:

-----

At death of last surviving party, ownership passes to P.O.D. beneficiaries and is not part of last surviving party's estate.

--- MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION [optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as P.O.D. beneficiaries.

[to add agency designation to account, name one or more agents]:

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[select one and initial]:

--- AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

--- AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

2. A contract of deposit that does not contain provisions in substantially the form provided in section 1 is governed by sections 30.1-31-02 through 30.1-31-20 applicable to the type of account that most nearly conforms to the depositor's intent.

30.1-31-06. (6-205) Designation of agent.

1. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

2. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

3. Death of the sole party or last surviving party terminates the authority of an agent.

30.1-31-07. (6-206) Applicability of sections 30.1-31-02 through 30.1-31-20. The provisions of sections 30.1-31-08 through 30.1-31-13 concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors, and do not apply to the right of those

persons to payment as determined by the terms of the account. Sections 30.1-31-14 through 30.1-31-20 govern the liability and setoff rights of financial institutions that make payments pursuant to it.

30.1-31-08. (6-211) Ownership during lifetime.

1. In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.
2. During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.
3. A beneficiary in an account having a P.O.D. designation has no right to sums on deposit during the lifetime of any party.
4. An agent in an account with an agency designation has no beneficial right to sums on deposit.

30.1-31-09. (6-212) Rights at death.

1. Except as otherwise provided in this section, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30.1-31-08, and the right of survivorship continues between the surviving parties.
2. In an account with a P.O.D. designation:
  - a. On death of one of two or more parties, the rights in sums on deposit are governed by subsection 1.
  - b. On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

3. Sums on deposit in a single-party account without a P.O.D. designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 30.1-31-08 is transferred as part of the decedent's estate. A P.O.D. designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

4. The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

30.1-31-10. (6-213) Alteration of rights.

1. Rights at death under section 30.1-31-09 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

2. A right of survivorship arising from the express terms of the account, section 30.1-31-09, or a P.O.D. designation, may not be altered by will.

30.1-31-11. (6-214) Accounts and transfers nontestamentary. Except as provided in chapter 30.1-05 or as a consequence of, and to the extent directed by, section 30.1-31-12, a transfer resulting from the application of section 30.1-31-09 is effective by reason of the terms of the account involved and this part and is not testamentary or subject to chapters 30.1-01 through 30.1-25.

30.1-31-12. (6-215) Rights of creditors and others.

1. If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or P.O.D. designation under sections 30.1-31-02 through 30.1-31-20 is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

2. A surviving party or beneficiary who receives payment from an account after death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to the extent necessary to discharge the claims and allowances described in subsection 1 remaining unpaid after application of the decedent's estate. A proceeding to assert the

liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after death of the decedent.

3. A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.
4. Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in section 30.1-31-19 for a financial institution that makes payment in accordance with the terms of the account.

30.1-31-13. (6-216) Community property and tenancy by the entireties.

1. A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or section 30.1-31-09 may not be altered by will.
2. Sections 30.1-31-02 through 30.1-31-20 do not affect the law governing tenancy by the entireties.

30.1-31-14. (6-221) Authority of financial institution. A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a P.O.D. designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

30.1-31-15. (6-222) Payment on multiple-party account. A financial institution, on request, may pay sums on deposit in a multiple-party account to:

1. One or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or
2. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary, unless the account is without right of survivorship under section 30.1-31-09.

30.1-31-16. (6-223) Payment on P.O.D. designation. A financial institution, on request, may pay sums on deposit in an account with a P.O.D. designation to:

1. One or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;
2. The beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or
3. The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account either as a party or beneficiary.

30.1-31-17. (6-224) Payment to designated agent. A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

30.1-31-18. (6-225) Payment to minor. If a financial institution is required or permitted to make payment pursuant to sections 30.1-31-02 through 30.1-31-20 to a minor designated as a beneficiary, payment may be made pursuant to chapter 47-24.1.

30.1-31-19. (6-226) Discharge.

1. Payment made pursuant to sections 30.1-31-02 through 30.1-31-20 in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.
2. Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.
3. A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

4. Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

30.1-31-20. (6-227) Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is the proportion to which the party is, or immediately before death was, beneficially entitled under section 30.1-31-08 or, in the absence of proof of that proportion, an equal share with all parties.

30.1-31-21. (6-301) Definitions. As used in sections 30.1-31-21 through 30.1-31-30:

1. "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.
2. "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.
3. "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.
4. "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.
5. "Security account" means a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

30.1-31-22. (6-302) Registration in beneficiary form - Sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

30.1-31-23. (6-303) Registration in beneficiary form - Applicable law. A security may be registered in beneficiary form if the form is



authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

30.1-31-24. (6-304) Origination of registration in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

30.1-31-25. (6-305) Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "T.O.D.", or by the words "pay on death" or the abbreviation "P.O.D.", after the name of the registered owner and before the name of a beneficiary.

30.1-31-26. (6-306) Effect of registration in beneficiary form. The designation of a T.O.D. beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

30.1-31-27. (6-307) Ownership on death of owner. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

30.1-31-28. (6-308) Protection of registering entity.

1. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by sections 30.1-31-21 through 30.1-31-30.
2. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in sections 30.1-31-21 through 30.1-31-30.
3. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section

30.1-31-27 and does so in good faith reliance on the registration, on sections 30.1-31-21 through 30.1-31-30, and on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of sections 30.1-31-21 through 30.1-31-30 do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under sections 30.1-31-21 through 30.1-31-30.

4. The protection provided by sections 30.1-31-21 through 30.1-31-30 to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

30.1-31-29. (6-309) Nontestamentary transfer on death.

1. A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 30.1-31-21 through 30.1-31-30 and is not testamentary.
2. Sections 30.1-31-21 through 30.1-31-30 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

30.1-31-30. (6-310) Terms, conditions, and forms for registration.

1. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered T.O.D. beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters L.D.P.S., standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

2. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

- a. Sole owner - sole beneficiary: John S. Brown T.O.D. (or P.O.D.) John S. Brown Jr.
- b. Multiple owners - sole beneficiary: John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr.
- c. Multiple owners - primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr. SUB. BENE. Peter Q. Brown or John S. Brown Mary B. Brown JT. TEN. T.O.D. John S. Brown Jr. L.D.P.S.

SECTION 4. REPEAL. Chapter 30.1-31 of the North Dakota Century Code is repealed.

SECTION 5. APPLICATION OF ACT. Sections 30.1-31-21 through 30.1-31-30 apply to registrations of securities in beneficiary form made before or after the effective date of this Act by decedents dying on or after the effective date of this Act.

Approved March 19, 1991  
Filed March 19, 1991

# JUDICIAL PROOF

## CHAPTER 352

HOUSE BILL NO. 1343  
(Representatives Meyer, Kerzman)  
(Senator Krauter)

### VIDEOTAPED TESTIMONY

AN ACT to provide for the admission as evidence of the videotaped statement of the child victim of certain sexual offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Videotaped statement of child sexual offense victim - Criteria for admission as evidence.

1. In any prosecution for a violation of section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, or 12.1-20-11 in which the victim is less than fifteen years of age, the oral statement of the child victim may be recorded before trial and, subject to subsection 2, is admissible as evidence in any court proceeding regarding the offense if the following conditions are satisfied:
  - a. The accused must be given reasonable written notice of the time and place for taking the videotaped statement;
  - b. The accused must be afforded the opportunity to hear and view the testimony from outside the presence of the child by means of a two-way mirror or other similar method that will ensure that the child cannot hear or see the accused;
  - c. The accused must have the opportunity to communicate orally with counsel by electronic means while the videotaped statement is being made; and
  - d. All questioning must be done by attorneys for the prosecution and the defense; however, upon request of any of the parties or upon the determination of the court that it would be appropriate, the court may appoint a person who is qualified as an expert and who has dealt with the child in a therapeutic setting to aid the court throughout proceedings conducted under this section and the court may appoint a guardian ad litem to protect the interests of the child.
2. A child victim's videotaped statement is admissible pursuant to subsection 1 if the court finds that the child is unavailable as a witness to testify at trial and, upon viewing the videotape recording before it is shown to the jury, determines that it is sufficiently reliable and trustworthy and that the interests of justice will best be served by admission of the statement into evidence. For purposes of this subsection, "unavailable" includes

a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or psychological strain if required to testify at trial. The court, in making its findings and determinations under this subsection, shall consider at least the following:

- a. The nature of the offense;
- b. The significance of the child's testimony to the case;
- c. The child's age;
- d. The child's psychological maturity and understanding; and
- e. The nature, degree, and duration of potential injury to the child from testifying.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 353

SENATE BILL NO. 2291  
(Traynor)

### AFFIDAVIT OF PUBLICATION

AN ACT to amend and reenact section 31-04-06 of the North Dakota Century Code, relating to affidavits of publication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-04-06 of the North Dakota Century Code is amended and reenacted as follows:

31-04-06. How proof of publication made. Proof of the publication of a document or notice required by law or by an court order of the court or judge to be published in a newspaper may be made by the affidavit of the publisher or printer of the newspaper, or his foreman, clerk, or bookkeeper the publisher's designee, annexed to a copy of the document or notice, specifying the paper in which and the times when the publication was made.

Approved March 11, 1991  
Filed March 11, 1991

# JUDICIAL REMEDIES

## CHAPTER 354

HOUSE BILL NO. 1262  
(Representatives Scherber, Svedjan, Payne)  
(Senators Graba, Stenehjem)

### FREE CLINIC VOLUNTEER IMMUNITY

AN ACT to create and enact a new section to chapter 32-03.1 of the North Dakota Century Code, relating to providing immunity to licensed health care providers who render medical care on a voluntary basis at free clinics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Immunity for a licensed health care provider who provides volunteer medical care at free clinics. A health care provider licensed under title 43 who renders medical care on a voluntary basis at a free clinic is not liable in any personal injury civil action for acts or omissions resulting in the rendering of that care unless it is plainly alleged in the complaint and later proven that the health care provider's acts or omissions constituted intentional misconduct or gross negligence. For purposes of this section, "voluntary" is defined as without receiving remuneration of any sort. "Free clinic" is defined as a clinic that is established to provide primary health care to persons who are otherwise unable to obtain medical services due to their lack of access to health insurance or medical assistance.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 355

SENATE BILL NO. 2066  
(Legislative Council)  
(Interim Judiciary Committee)

### ATTACHMENT PROCEDURES

AN ACT to create and enact a new section to chapter 32-08.1 of the North Dakota Century Code, relating to the prehearing attachment of property; and to amend and reenact section 32-08.1-02, subsection 1 of section 32-08.1-03, and section 32-08.1-17 of the North Dakota Century Code, relating to the issuance of writs of attachment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-08.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-02. Writ Issuance of writ - Hearing and notice requirement - Form and contents. ~~The~~ A writ of attachment ~~shall~~ may be issued on the request of the plaintiff ~~at any time~~ before final judgment and after a summons and a complaint is filed. ~~It shall~~ Except as provided in section 2 of this Act, the writ may only be issued following a hearing at which the plaintiff shall present the affidavit described in section 32-08.1-03. The court may issue the writ of attachment only if the plaintiff has provided the required affidavit, has executed a sufficient bond as required under sections 32-08.1-03 and 32-08.1-05, and has made a prima facie showing of the right to attachment. The plaintiff shall provide the defendant with a copy of the request for the writ and the accompanying affidavit and notice of the time of the hearing. The writ if issued must be directed to the sheriff of some county in which the property of the defendant is supposed to be, and ~~shall~~ must require ~~him~~ the sheriff to attach all the property of the defendant within ~~his~~ the sheriff's county or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with costs and expenses. ~~It shall~~ The writ must be in the name of the court and be sealed with its seal and signed by its judge.

SECTION 2. A new section to chapter 32-08.1 of the North Dakota Century Code is created and enacted as follows:

Prehearing attachment - Issuance of order - Notice of hearing. A writ of attachment may be issued on the plaintiff's request and prior to the hearing required under section 32-08.1-02 if the plaintiff's request is accompanied by an affidavit stating the basis and amount of claim against the defendant and describing facts that constitute grounds for attachment under subdivision a, b, c, or d of subsection 1 of section 32-08.1-03. The court may issue the writ prior to the hearing required under section 32-08.1-02 only if the plaintiff demonstrates the probability of success on the merits, the existence of one or more of the grounds specified in subdivision a, b, c, or d of subsection 1 of section 32-08.1-03, and that, due to extraordinary circumstances, the plaintiff's interests cannot be protected by an



appropriate order of the court, other than by directing the prehearing attachment of property. The defendant must be served immediately after the attachment is completed with a copy of the plaintiff's request for the writ, a copy of the affidavit and all other documents offered in support of the request, and a notice of the availability of a hearing under section 32-08.1-17.

SECTION 3. AMENDMENT. Subsection 1 of section 32-08.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before any writ of attachment ~~shall~~ may be executed, the plaintiff or someone on ~~his~~ the plaintiff's behalf shall make and attach thereto an affidavit stating ~~that~~ the basis and amount of the claim against the defendant is indebted to the plaintiff in a sum exceeding fifty dollars specifying the amount above all setoffs, and that the same is due upon contract or upon a judgment, and that the affiant knows or has good reason to believe any of the following:
  - a. The defendant is absent from this state, or is concealed therein so that summons cannot be served on him.
  - b. The defendant has disposed of or concealed or is about to dispose of or conceal his property or some part thereof with intent to defraud his creditors.
  - c. The defendant has removed or is about to remove property out of this state with intent to defraud his creditors.
  - d. The defendant fraudulently incurred the obligation respecting which the action is brought.
  - e. The defendant is not a resident of this state.
  - f. The defendant is a foreign corporation; or ~~if~~ is a domestic ~~that~~ corporation and no officer or agent thereof on whom to serve the summons exists or resides in this state or can be found.
  - g. The action is against a defendant as principal on an official bond to recover money due the state or to some political subdivision thereof, or that the action is against the defendant as principal upon a bond or other instrument given as evidence of debt for or to secure the payment of money embezzled or misappropriated by such defendant as an officer of the state or of a political subdivision thereof.
  - h. The action is against a defendant to recover purchase money for personal property sold to the defendant, in which case the property must be specifically described, if one of the conditions under subdivision a, e, or i and one of the conditions under subdivision b or c is also alleged.
  - i. ~~The defendant is about to remove his residence from the county where he resides with the intention of permanently changing the~~

~~same, and fails or neglects on demand to give security for the debt upon which the action is commenced.~~

- j. The action is against the owner of any motor vehicle for damages alleged to have been caused by the negligence of such owner or his duly authorized agent, the motor vehicle alleged to have been driven, occupied, or owned by a negligent driver or owner thereof, at the time of such accident, may be attached, if one of the conditions under subdivision a or e and one of the conditions under subdivision b or c is also alleged.

SECTION 4. AMENDMENT. Section 32-08.1-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-17. Answer to writ - Trial. Within ten days after notice of the issuing of a writ of attachment against ~~his~~ the defendant's property, the defendant may, by special answer, deny the existence, at the time of the making of the attachment affidavit, of the material facts stated ~~therein except the alleged liability and the amount thereof, in the affidavit~~ and may assert undue hardship as a defense. The court shall try the issue so raised shall be tried by the court, before the trial of the action and the affirmative shall be upon the plaintiff, but in no event later than fourteen days after the writ of attachment is issued. The plaintiff has the burden of proving the conditions for issuance of the prehearing writ of attachment as described in section 2 of this Act. If the defendant has made an assignment for the benefit of ~~his~~ the defendant's creditors ~~his~~ the defendant's assignee may answer and defend pursuant to this section.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 356

HOUSE BILL NO. 1467  
(Carlisle, Henegar, Hokana)

### ATTACHMENT PROPERTY DISPOSITION

AN ACT to amend and reenact section 32-08.1-13 of the North Dakota Century Code, relating to care of property and collection of debts under attachment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-08.1-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-08.1-13. Care of property - Collection of debts. The officer shall ~~keep deposit with the court the property seized by him the officer and the proceeds of such as shall have been sold to answer any judgment which may be recovered in such action; and shall, subject to the direction of the court or judge, collect and receive into his possession deposit with the court all the debts, credits, and effects of the defendant. The officer may also take such legal proceedings, either in his own name or in the name of such defendant, as may be necessary for that purpose and discontinue the same at such times and on such terms as the court or judge may direct. The retention, protection, and final disposition of the property must be determined by the court.~~

Approved April 2, 1991  
Filed April 4, 1991

# CHAPTER 357

SENATE BILL NO. 2444  
(Senator Stenehjem)  
(Representative Kretschmar)

## GARNISHMENT DEBTOR DEPENDENTS

AN ACT to amend and reenact subsection 2 of section 32-09.1-03, sections 32-09.1-04, 32-09.1-07, and 32-09.1-09 of the North Dakota Century Code, relating to garnishment debtors claiming dependent family members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 32-09.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor. Within ten days after receipt of the garnishment summons, the garnishment debtor must provide to the employer a verified list of the names and social security numbers, if any, of the dependents who reside with the garnishment debtor. If the garnishment debtor fails to provide the list, it is conclusively presumed that the garnishment debtor claims no dependents.

SECTION 2. AMENDMENT. Section 32-09.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-04. Notice before garnishment of earnings. At least ten days ~~prior to before~~ the issuance of any garnishee summons against the earnings of any person, the creditor shall serve upon the debtor a notice that a garnishee summons may be issued. The notice ~~shall~~ must be served personally or by first-class mail. Failure to serve the notice renders any subsequent garnishment void. The notice ~~shall~~ must be in substantially the following form:

To: ----- Date: -----  
Judgment Debtor

Please take notice that a garnishee summons ~~which that~~ will require part of your wages to be withheld may be served upon your employer, without any further court proceedings or notice to you, at any time after ten days following the date of this notice. For each dependent family member residing with you, the amount subject to garnishment for any workweek may be reduced by twenty dollars, if within ten days after receipt of the garnishee summons you provide to your employer a verified list of the dependent family members residing with you and their social security numbers, if any. You may wish to contact the

undersigned judgment creditor or his attorney in order to arrange for the settlement of the debt, which is \$-----

-----  
Judgment Creditor  
Address

SECTION 3. AMENDMENT. Section 32-09.1-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons, a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories which that are served with the garnishee summons. The plaintiff may not require disclosure of an indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control in excess of to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff, and must state that after the expiration of the period of time specified in section 32-09.1-20, from the date of service of the garnishee summons, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability thereon on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings have been are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days prior to before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

The garnishee summons and notice to defendant shall must be substantially in the following form:

State of North Dakota ) In ----- Court  
                          ) ss.  
County of -----) -----  
  
-----  
                          Plaintiff  
against  
-----  
                          Defendant  
and

Garnishee Summons and  
Notice to Defendant

-----  
Garnishee

The State of North Dakota to the above-named Garnishee:

You are hereby summoned and required to serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, ----- (Give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$----- (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The amount of the judgment which remains unpaid is \$----- You are required to retain in your possession the defendant's property, money, and effects in an amount not exceeding the amount required to be disclosed by you, or so much thereof as is not exempt.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$----- (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount ~~which~~ that remains unpaid.)

You ~~shall~~ must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 180 days from the date of service of this summons upon you. If no writ of execution has been served upon you, or no agreement has been made for payment, within 180 days, the garnishment ~~shall end ends~~ and any property or funds held by you ~~shall~~ must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant, or indebtedness to you incurred by the defendant, within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings have been subjected to garnishment.

Dated this ---- day of -----, 19----.

By: -----

NOTICE TO DEFENDANT

To:-----  
-----

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), ~~which~~ that are served upon you, were also served upon

-----, the garnishee.

-----  
(Attorneys for Plaintiff)

-----  
(Address)

-----  
(Telephone)

SECTION 4. AMENDMENT. Section 32-09.1-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-09. Disclosure. Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories ~~which~~ that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation, it must be verified by some officer or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.
3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution, or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

A garnishment disclosure form must be served upon the garnishee. The disclosure must be substantially in the following form:

State of North Dakota )  
 County of ----- ) ss. In ----- Court  
 ----- ) -----

-----  
 Plaintiff  
 vs.  
 -----  
 Defendant  
 and  
 -----  
 Garnishee

Garnishment Disclosure

I am the ----- of the garnishee and duly authorized to disclose for the garnishee.

On the ----- day of -----, 19---, the time of service of garnishee summons on the garnishee, there was due and owing the defendant from the garnishee the following:

1. Earnings. For the purposes of garnishment, "earnings" means compensation payable for personal service whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to under a pension or retirement program. "Earnings" does not include social security benefits or veterans' disability pension benefits, except when the benefits are subject to garnishment to enforce any order for the support of a dependent child. "Earnings" includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.
  - a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.  
 -----
  - b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks shall must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.  
 -----
  - c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a.



-----  
 d. Enter on the line below 25 percent of line a.  
 -----

e. Enter on the line below the lesser of line c and line d.  
 -----

f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).  
 -----  
 -----

g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.  
 -----  
 -----

h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.  
 -----  
 -----

2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.  
 -----

3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.  
 -----

4. Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines ~~1(e)~~ 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days prior to before receipt of the first garnishment on a debt is void and should be disregarded.)  
 -----  
 -----

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State the names each person's name and addresses of the persons address and the nature of their that person's claim, if known. (Any assignment of wages made by the

defendant within ten days prior to before the receipt of the first garnishment on a debt is void and should be disregarded.)

-----

6. Enter on the line below the total of lines 4 and 5.

-----

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of ~~line 1(e)~~ lines 1(h), 2, and 3.

-----

8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

-----

9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.

-----

Signature -----

Authorized Representative  
of Garnishee

-----

Title

Subscribed and sworn to before me this ----- day  
of -----, 19-----.

-----

Notary Public

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 358

HOUSE BILL NO. 1487  
(Kelsch)

### GARNISHEE SUMMONS SERVICE

AN ACT to amend and reenact section 32-09.1-08 of the North Dakota Century Code, relating to service of the garnishee summons and notice to a defendant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-08 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-08. Service. The garnishee summons and notice to defendant shall be served upon the garnishee in the same manner as other summons in that court of record except that service must be personal. The plaintiff shall serve with the garnishee summons a disclosure form, substantially as set out in this chapter. The plaintiff may also serve interrogatories with the garnishee summons. A copy of the garnishee summons and copies of all other papers served on the garnishee must be served personally upon the defendant in accordance with the North Dakota Rules of Civil Procedure for personal service not later than ~~five~~ ten days after service is made upon the garnishee. A single garnishee summons may be addressed to two or more garnishees but must state whether each is summoned separately or jointly.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 359

HOUSE BILL NO. 1097

(Committee on Judiciary)

(At the request of the Office of Management and Budget)

### AGENCY TO WHICH CLAIM PRESENTED

AN ACT to amend and reenact section 32-12-03 of the North Dakota Century Code, relating to the refusal of a claim by the responsible department, institution, agency, board, or commission before action may be brought against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-12-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-12-03. Claim presented and refused before action brought. No action upon a claim arising upon contract for the recovery of money only can be maintained against the state until the claim has been presented to the office of management and budget department, institution, agency, board, or commission to which claim relates for allowance and allowance thereof refused. The neglect or refusal of the office to act on such claim for a period of ten days after its presentation for allowance shall be deemed a refusal to allow the claim.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 360

HOUSE BILL NO. 1454  
(Representatives Brokaw, Gerntholz, DeWitz)  
(Senators Kelsh, E. Hanson, O. Hanson)

### HOMESTEAD PROTECTION EXTENDED

AN ACT to amend and reenact sections 4 and 11 of chapter 394 of the 1989 Session Laws of North Dakota, relating to notice of designation of homesteads and expiration of the homestead protection provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4 of chapter 394 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 4. Designation of homesteads to be separately redeemed. The debtor may designate a reasonably compact contiguous area including the debtor's dwelling but not to exceed one hundred sixty acres [64.75 hectares] to be sold separately at the foreclosure sale by serving a copy of the legal description of the property claimed under this section on the sheriff, the register of deeds, and the parties to the foreclosure proceeding at least ~~fifteen~~ ten business days before the date of the scheduled sheriff's sale.

SECTION 2. AMENDMENT. Section 11 of chapter 394 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1993, and after that date is ineffective.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 361

SENATE BILL NO. 2084  
(Senator Tennefos)  
(Representative Dorso)

**TRUSTEE IN CONTRACT FOR DEED CANCELLATION**

AN ACT to amend and reenact sections 32-19.2-01, 32-19.2-02, 32-19.2-03, and 32-19.2-04 of the North Dakota Century Code, relating to appointment and duties of a trustee in an action for cancellation of a contract for deed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19.2-01. Appointment of trustee. On application of the mortgagee or contract for deed vendor, in any action for the foreclosure of a real estate mortgage or for cancellation of a contract for deed upon any commercial building, including apartments of two or more units, the court, upon ten days' notice to the mortgagor or contract for deed vendee, may, upon good cause being shown, appoint a trustee to take possession of the premises. Any person, other than the mortgagee or vendor, or its agents or employees, may act as trustee if the court deems them qualified.

SECTION 2. AMENDMENT. Section 32-19.2-02 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-02. Authority and duties of trustee. The trustee shall:

1. Take possession of the premises.
2. Pay, to the extent funds are available, all utilities, taxes, ~~and~~ insurance, and expenses of maintenance and operation.
3. Receive the rentals from tenants.
4. Remove tenants for nonpayment of rent or for any other cause permissible by law.
5. Rent premises.

SECTION 3. AMENDMENT. Section 32-19.2-03 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-03. Termination and accounting. The appointment of a trustee ~~shall continue~~ continues until:

1. The expiration of the period of redemption;

2. The redemption of the premises by the mortgagor or contract vendee;
3. The voluntary dismissal of the foreclosure or cancellation action; or
4. ~~His removal~~ Removal of the trustee by the court.

Within thirty days after the termination of ~~his~~ appointment, the trustee shall file with the court a report of ~~his~~ the trustee's activities and all receipts and expenditures, and shall serve a copy ~~thereof~~ on the mortgagor or the vendee by certified or registered mail, an affidavit of service by mail being competent proof thereof. The trustee's account ~~shall become~~ becomes final unless objected to within thirty days from the date of mailing to the mortgagor or contract vendee.

SECTION 4. AMENDMENT. Section 32-19.2-04 of the North Dakota Century Code is amended and reenacted as follows:

32-19.2-04. Compensation of trustee and distribution of funds. Upon the trustee's account becoming final, the trustee shall pay all remaining funds, less ~~his~~ the trustee's fee and expenses, to the mortgagor or contract vendee or to such other person as may be otherwise provided by law. The trustee ~~shall be~~ is entitled to a fee as set by the court. All expenses incurred by the trustee in performing ~~his~~ duties ~~hereunder shall~~ under this chapter must be reimbursed out of available funds.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 362

HOUSE BILL NO. 1101

(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

### UNIFORM FOREIGN-MONEY CLAIMS ACT

AN ACT to adopt the Uniform Foreign-Money Claims Act; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.
2. "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.
3. "Conversion date" means the banking day before the date on which money, in accordance with this Act, is:
  - a. Paid to a claimant in an action or distribution proceeding;
  - b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
  - c. Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.
4. "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.
5. "Foreign money" means money other than money of the United States.
6. "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.
7. "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.



8. "Money of the claim" means the money determined as proper pursuant to section 4 of this Act.
9. "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.
10. "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.
11. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

SECTION 2. Scope. This Act applies only to a foreign-money claim in an action or distribution proceeding. This Act applies to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

SECTION 3. Variation by agreement. The effect of this Act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment. Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

SECTION 4. Determining money of the claim. The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment. If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

1. Regularly used between the parties as a matter of usage or course of dealing;
2. Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or
3. In which the loss was ultimately felt or will be incurred by the party claimant.

SECTION 5. Determining amount of the money of certain contract claims.

1. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

2. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.
3. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

#### SECTION 6. Asserting and defending foreign-money claim.

1. A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claim is in United States dollars.
2. An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.
3. A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.
4. The determination of the proper money of the claim is a question of law.

#### SECTION 7. Judgments and awards on foreign-money claims - Times of money conversion - Form of judgment.

1. Except as provided in subsection 3, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.
2. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.
3. Assessed costs must be entered in United States dollars.
4. Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.
5. A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the

smaller from the larger, and must specify the rates of exchange used.

6. A judgment substantially in the following form complies with subsection 1:

IT IS ADJUDGED AND ORDERED, that defendant (insert name) pay to plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

7. If a contract claim is of the type covered by section 5 of this Act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.
8. A judgment must be docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. A judgment may be discharged by payment.

SECTION 8. Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

SECTION 9. Prejudgment and judgment interest.

1. With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection 2, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.
2. The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party, or its attorney causing undue delay or expense.
3. A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

SECTION 10. Enforcement of foreign judgments.

1. If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 7 of this Act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.
2. A foreign judgment may be docketed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.
3. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.
4. A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

**SECTION 11. Determining United States dollar value of foreign-money claims for limited purposes.**

1. Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.
2. For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections 3 and 4.
3. A party seeking process, costs, bond, or other undertaking under subsection 2 shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day before the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.
4. A party seeking the process, costs, bond, or other undertaking under subsection 2 shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

**SECTION 12. Effect of currency revalorization.** If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in

the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money. If the substitution occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

SECTION 13. **Supplementary general principles of law.** Unless displaced by this Act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement this Act.

SECTION 14. **TRANSITIONAL PROVISION.** This Act applies to actions and distribution proceedings commenced after the effective date of this Act.

SECTION 15. **EFFECTIVE DATE.** This Act becomes effective on January 1, 1992.

Approved March 19, 1991  
Filed March 19, 1991

# COUNTY JUSTICE COURT

## CHAPTER 363

HOUSE BILL NO. 1486  
(R. Berg)

### EVICTION GROUNDS

AN ACT to create and enact a new subsection to section 33-06-01 of the North Dakota Century Code, relating to grounds for eviction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 33-06-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the premises.

Approved April 3, 1991  
Filed April 4, 1991

**CHAPTER 364**

HOUSE BILL NO. 1481  
(Kelsch)

**EVICITION NOTICE SERVICE**

AN ACT to amend and reenact section 33-06-02 of the North Dakota Century Code, relating to service of the written notice of intention to evict.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 33-06-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

33-06-02. Appearance - Notice of intention to evict - When required - When and how served. In any action for eviction the time specified in the summons for the appearance of the defendant may not be less than three nor more than fifteen days from the date on which it is issued. In all cases arising under subsections 4, 5, and 6 of section 33-06-01, three days' written notice of intention to evict must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted. The notice may be served and returned as a summons is served and returned or, if the party cannot be found, then by the sheriff of the county posting the notice conspicuously upon the premise. Service by delivery of a copy of the summons to the defendant in person within the county must be made at least three days before the time fixed for the appearance of the defendant. Service elsewhere or personal service in any other mode must be made at least seven days before the time fixed for the appearance of the defendant.

Approved March 25, 1991  
Filed March 26, 1991

# LABOR AND EMPLOYMENT

## CHAPTER 365

SENATE BILL NO. 2349  
(Graba)

### CITY EMPLOYEE HOURS OF LABOR

AN ACT to repeal sections 34-01-08 and 34-01-09.1 of the North Dakota Century Code, relating to limitation on hours of labor of employees of a city over five thousand population and maximum hours of labor allowed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 34-01-08 and 34-01-09.1 of the North Dakota Century Code are repealed.

Approved March 25, 1991  
Filed March 26, 1991



# LIENS

## CHAPTER 366

HOUSE BILL NO. 1252  
(Ritter)

### COLLATERAL REAL ESTATE MORTGAGE DURATION

AN ACT to amend and reenact section 35-03-17 of the North Dakota Century Code, relating to collateral real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-03-17. Collateral real estate mortgages. A mortgage which contains the following statement in printed or typed capital letters: "THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO NORTH DAKOTA CENTURY CODE CHAPTER 35-03", is subject to the provisions of this section. A mortgage executed pursuant to this section must be entitled in printed or typed capital letters: "MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE". A mortgage made pursuant to this section, notwithstanding the fact that from time to time during the term thereof no indebtedness is due from the mortgagor to the mortgagee, constitutes a continuing lien against the real property covered thereby for the amount stated in the mortgage. Any sums not exceeding the face amount of the mortgage, together with interest thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee during the term of the mortgage have a lien priority as of the date the mortgage was filed. At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial, agricultural, or consumer loans or lines of credit including, but not limited to, revolving notes and credits and overdraft checking plans.

A filed collateral real estate mortgage which states a maturity date of the instrument secured thereby of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed collateral real estate mortgage is effective for a period of five years from the date of filing and thereafter for a period of sixty days. A filed collateral real estate mortgage which states that the instrument secured thereby is payable on demand is effective for five years from the date of filing and thereafter for a period of sixty days. The effectiveness of a filed collateral real estate mortgage lapses upon the expiration of the sixty-day period unless an addendum to the collateral real estate mortgage extending its effective date is filed prior to the lapse. If a filed collateral real estate mortgage exists at the time insolvency proceedings are commenced by or against the debtor, the mortgage remains effective until sixty days after termination of the insolvency proceeding or until expiration of the five-year period, whichever occurs later. Upon such lapse, the lien created by the collateral real estate mortgage terminates. An addendum

continuing the effectiveness of the lien of the collateral real estate mortgage may be filed by the mortgagee:

1. Within six months before and sixty days after a stated maturity date of five years or less; and
2. Otherwise within six months before and sixty days after the expiration of the five-year effective date period.

An addendum to a collateral real estate mortgage for the sole purpose of continuing the effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate mortgage will be continued for five years after the stated maturity date in those instances where the original collateral real estate mortgage provided a maturity date or for five years after the expiration of the five-year period whereupon it lapses in the same manner as provided above unless another addendum to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to collateral real estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the collateral real estate mortgage.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 367

SENATE BILL NO. 2397  
(Holmberg)

### RESIDENTIAL MORTGAGE INFORMATION

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to the responsibility of mortgagees to provide information necessary to satisfy loans secured by mortgages on residential real property that is being sold; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is created and enacted as follows:

Request for information concerning payoff and escrow amounts - Penalty - Venue. Unless otherwise stated in the loan or mortgage, within seven business days after receipt of a written request that specifies the name of the owner of the property and the loan number assigned to a loan secured by a mortgage on residential real property and that indicates the information is necessary to close a sale of the property, the servicer of a loan secured by a mortgage on residential real property shall provide to the owner of the property or to that person's representative full information concerning the amount necessary on a date specified in the request to pay off the loan and of any amount held in escrow for payment of insurance premiums, taxes, and other costs relating to the real property. The servicer of the loan secured by a mortgage may not charge any fee for providing the information.

If the servicer of the loan fails to deposit with the United States postal service, facsimile, or deliver personally the information requested within seven business days after receipt of the written request for information and the closing date for sale of the property is postponed as a result of the delay, the servicer of the loan is liable to the owner of the property for all damages sustained because of the delay. Notwithstanding any other law, an action brought to recover damages under this section must be heard in the county where the real property is located or where the plaintiff resides if the residence is within this state.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 368

HOUSE BILL NO. 1526  
(Laughlin)

### REPAIRMEN'S LIENS

AN ACT to amend and reenact sections 35-13-01, 35-13-02, 35-13-03, and 35-13-04 of the North Dakota Century Code, relating to repairmen's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-13-01. Repairman's lien authorized. Any blacksmith, machinist, farm equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business within this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien thereon, and on any accessories and parts placed upon the property, for reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed one thousand dollars or twenty-five percent or, two thousand five hundred dollars or twenty-five percent for property used for agricultural purposes, of the value of the property, in its repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

SECTION 2. AMENDMENT. Section 35-13-02 of the North Dakota Century Code is amended and reenacted as follows:

35-13-02. Lien statement - Contents - When required - Filing. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:

1. The labor performed.
2. The materials furnished.

3. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
4. The name of the person for whom the labor was performed or to whom the materials were furnished.
5. A description of the property upon which the lien is claimed.

A person filing a verified statement shall within twenty three days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.

SECTION 3. AMENDMENT. Section 35-13-03 of the North Dakota Century Code is amended and reenacted as follows:

35-13-03. Separate articles of personal property may be included in one lien statement. Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor may include all the articles of personal property so made, altered, or repaired within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, preceding the filing of the lien statement in the same statement, and the statement has the same force and effect as though a separate statement had been filed for each article.

SECTION 4. AMENDMENT. Section 35-13-04 of the North Dakota Century Code is amended and reenacted as follows:

35-13-04. Priority of lien. A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the mechanic's repairman's lien up to one thousand dollars or twenty-five percent or, two thousand five hundred dollars or twenty-five percent for property used for agricultural purposes, of the retail value, whichever is greater, in its repaired condition, has priority over the mortgage or financing statement.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 369

HOUSE BILL NO. 1538  
(Laughlin, Brokaw)

### AGRICULTURAL SUPPLIERS' LIENS

AN ACT to amend and reenact section 35-31-02 of the North Dakota Century Code, relating to filing of agricultural supplier's lien statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien. To obtain an agricultural supplier's lien, the person entitled to the lien, within ~~ninety~~ one hundred twenty days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the county or counties in which the crop, agricultural product, or livestock was grown. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.

Approved April 8, 1991  
Filed April 8, 1991

\* NOTE: Section 35-31-02 was also amended by section 10 of Senate Bill No. 2024, chapter 449.

## CHAPTER 370

HOUSE BILL NO. 1383  
(Rennerfeldt, Schmidt, Porter)

### **AIRCRAFT REPAIR AND MAINTENANCE LIENS**

AN ACT to provide for the creation of an aircraft repair and maintenance lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Aircraft repair and maintenance lien authorized. Any person who repairs or performs maintenance work on an aircraft has a lien on the aircraft for:

1. The amount due under a contract for the repairs or maintenance work; or
2. If no amount is specified by contract, the reasonable and usual compensation for the repairs or maintenance work.

SECTION 2. Possession of aircraft.

1. A holder of a lien under this chapter may retain possession of the aircraft subject to the lien until the amount due is paid.
2. Except as provided in subsection 3, if the holder of a lien under this chapter relinquishes possession of the aircraft before the amount due is paid, that person may retake possession of the aircraft as provided by section 41-09-49.
3. The holder of a lien under this chapter may not retake possession of the aircraft from a bona fide purchaser for value who, before the date the lien is recorded under section 3 of this Act, purchases the aircraft without knowledge of the lien.

SECTION 3. Recording of lien. The holder of a lien under this chapter may record the lien on the aircraft by filing with the federal aviation administration aircraft registry not later than the ninetieth day after the date of performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations. The document must include:

1. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
2. The amount due for repairs or maintenance.
3. A complete description of the aircraft.

4. The name and address of the owner of the aircraft and the number assigned the aircraft by the federal aviation administration, if known.

SECTION 4. Notice to owner and lienholders.

1. The holder of a lien under sections 1 through 6 of this Act who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown on the records maintained for that purpose by the federal aviation administration aircraft registry not later than the thirtieth day after the date or performance of the last repair or maintenance. This notice must include:
  - a. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
  - b. The amount due for repairs or maintenance.
  - c. A complete description of the aircraft.
  - d. A statement describing the legal right of the holder of the lien under sections 1 through 6 of this Act to sell the aircraft at public auction and apply the proceeds to the amount due.
2. The notice must be delivered by registered mail.

SECTION 5. Sale of aircraft authorized. If the holder of a lien under sections 1 through 6 of this Act provides the notice required by section 4 of this Act and the amount due remains unpaid after the sixtieth day after the date of performance of the last repair or maintenance, the holder of the lien may sell the aircraft at a public sale if the court finds that the amount due is the amount specified by contract or the reasonable and usual compensation for the repairs or maintenance work performed and the holder may then apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

SECTION 6. Attorneys' fees. The court in a suit brought under sections 1 through 6 of this Act may award reasonable attorneys' fees to the prevailing party.

Approved April 16, 1991  
Filed April 18, 1991



# LIVESTOCK

## CHAPTER 371

SENATE BILL NO. 2221

(Committee on Agriculture)

(At the request of the State Board of Animal Health)

### ANIMAL HEALTH DUTIES

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to definitions; and to amend and reenact sections 36-01-08, 36-01-12, 36-01-13, 36-01-14, 36-01-17, and 36-01-19 of the North Dakota Century Code, relating to duties of the state board of animal health, powers of the state board of animal health over contagious and infectious diseases, diseased animals to be reported to the board, protest of killing of diseased animals, oaths and examinations, and the emergency fund in case of epizootic.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Captive wildlife" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.
2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, or swine.

SECTION 2. AMENDMENT. Section 36-01-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08. Duties of board - Rules. The state board of animal health shall protect the health of the domestic animals and captive wildlife of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and captive wildlife of this state. The board may make rules for the conduct of its business and to carry into effect the purposes of this chapter and other duties prescribed in this title. The rules of the state board of animal health must be adopted in accordance with chapter 28-32.

SECTION 3. AMENDMENT. Section 36-01-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-12. Powers of board over contagious and infectious diseases. The state board of animal health may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious

diseases among any of the domestic animals and captive wildlife of this state. For this purpose, the board may quarantine any domestic animal or captive wildlife which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal or captive wildlife found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal or captive wildlife therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

SECTION 4. AMENDMENT. Section 36-01-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal or captive wildlife belonging to that person or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The state board of animal health or any member of the board;
2. The state veterinarian or any other agent or representative of the state board of animal health; or
3. Any law enforcement officer of the county or city in which the animal is present. If a report is made to a law enforcement officer under this subsection, the officer shall report the facts immediately to the state board of animal health, the state veterinarian, or another agent or representative of the state board of animal health and failure to do so constitutes a violation of the provisions of this chapter.

SECTION 5. AMENDMENT. Section 36-01-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal or captive wildlife has been determined to be affected with a contagious or infectious disease and has been ordered killed by the state board of animal health, the state veterinarian, or an agent or representative of the state board of animal health, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered or certified mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving notice of the order, the owner or keeper may file a protest against the killing of the animal with the board or with the person who has ordered the animal killed. The protest must state under oath, that to the best of the knowledge and belief of the person making the protest, the animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All the experts must

be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 6. AMENDMENT. Section 36-01-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-17. Oaths and examinations. The state board of animal health, any member of the board, the state veterinarian, or any authorized agent or representative of the board, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals or captive wildlife. For this purpose, the board, members of the board, the state veterinarian, and any authorized agent or representative of the board, shall have the power to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and the fees must be paid by the board from moneys appropriated to it.

SECTION 7. AMENDMENT. Section 36-01-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-19. Emergency fund in case of epizootic. In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or captive wildlife, which cannot be controlled with the funds at the disposal of the state board of animal health, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 372

SENATE BILL NO. 2145  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK DEALER LICENSE AND BOND

AN ACT to amend and reenact sections 36-04-03 and 36-04-05 of the North Dakota Century Code, relating to licensing and bonds of livestock dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-04-03 of the North Dakota Century Code is amended and reenacted as follows:

36-04-03. Dealer's license required - Agent designation and licensure - Suitability for licensure - Liability of owner for agent's acts.

1. All dealers and agents must be licensed as provided in this chapter.
2. No agent may act for any dealer unless the dealer is licensed and has designated such agent to act in the dealer's behalf and has notified the department of the appointment in the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent an agent's license in such form as may be prescribed by the commissioner and has signed a statement in substantially the following form:

I, the undersigned applicant for a North Dakota livestock dealer's license, understand that I am strictly responsible for and will be held strictly liable for all acts, omissions, or failures arising out of livestock dealings of the agent(s) listed above, whether or not the dealings have been personally authorized by me.

3. No dealer may designate as an agent any person who has been denied a dealer's or agent's license or has had a dealer's or agent's license revoked for any reason or has otherwise acted in a manner which would be in violation of this chapter, except upon a determination by the commissioner that the person is sufficiently rehabilitated to serve the public as a dealer's agent and that the person does not owe any debt to any livestock seller or auction market. Conviction of an offense as defined by section 12.1-01-04, does not disqualify a person from licensure unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer's agent or that the person is not at present sufficiently rehabilitated under section 12.1-33-02.1.

4. Agents may not deal in their own names or issue a check or any other commercial paper except in the name of their principals when acting as an agent. A dealer is accountable and responsible for all the acts arising out of livestock dealings of a designated agent, whether authorized or unauthorized by the dealer.

SECTION 2. AMENDMENT. Section 36-04-05 of the North Dakota Century Code is amended and reenacted as follows:

36-04-05. Dealer to file bond with department - Additional bond may be required. Each applicant for a license under this chapter shall file with the application a bond issued by an approved surety company. The department must be named as the obligee in each bond but the bond will be held for the purpose of protecting and for the benefit of any person selling livestock or wool, as the case may be, to the licensed dealer or the dealer's agent. The bond must be conditioned for:

1. The faithful performance by the dealer and the dealer's designated agent of the duties as such;
2. The compliance by the dealer and the dealer's designated agent with all of the provisions of this code relating to the purchase of livestock or wool, as the case may be;
3. The full and complete payment to the seller for all livestock or wool purchased by the dealer or the dealer's designated agent; and
4. The full protection of any person who deals with the dealer or the dealer's designated agent.

Each bond must cover the license period of the dealer or such greater time as the commissioner may prescribe and must be approved as to amount, form, and sufficiency by the department. The minimum amount of bond is ten thousand dollars, and must be for any greater amount as may be determined by computing the amount of bond on the same basis as prescribed for dealers subject to the provisions of the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. The department may demand an additional or increased bond whenever in its judgment the volume of business of the principal warrants such demand.

In lieu of the bond required of dealers under this section, the applicant may file with the department the dealer's bond filed by that applicant with the United States department of agriculture and in effect pursuant to the Packers and Stockyards Act, 1921, naming the commissioner as the trustee of such bond. Bonds from out-of-state applicants may be in favor of a trustee who is a financially responsible, disinterested person satisfactory to the commissioner. The minimum amount of such bond is ten thousand dollars, unless the department determines that the amount of such bond is insufficient in any instance, in which event the department shall require the reasonable amount of the bond required to protect the public interest.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 373

SENATE BILL NO. 2132  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK DEALER PENALTIES

AN ACT to amend and reenact section 36-04-21 of the North Dakota Century Code, relating to adjudication of civil penalties for violations of livestock dealers laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-04-21 of the North Dakota Century Code is amended and reenacted as follows:

36-04-21. Penalties - Criminal - Civil - Injunctions.

1. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 374

SENATE BILL NO. 2149  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK BRANDS AND AUCTION MARKETS

AN ACT to amend and reenact sections 36-05-05, 36-09-02.1, and 36-09-23 of the North Dakota Century Code, relating to the expiration and renewal of livestock auction market licenses, standards for recording livestock brands or marks, and brand inspections; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-05-05 of the North Dakota Century Code is amended and reenacted as follows:

36-05-05. Expiration and renewal of license - Fee returned upon failure to issue or renew license. Each license issued under this chapter expires on the thirty-first day of ~~January~~ March next following the date of issuance ~~thereof~~. Each license must be renewed annually on or before ~~January~~ March thirty-first. The fee for a renewal license is the same as that prescribed for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant. Licenses issued in 1991 extend until March 1992.

SECTION 2. AMENDMENT. Section 36-09-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks. The commissioner shall record the brand or mark described in the application except that the commissioner shall refuse to record any brand or mark:

1. That has been previously recorded in favor of another person or one that is deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.
2. That contains less than two characters, except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:
  - a. The letters "g" or "q" or letters that are not in the gothic style.
  - b. The Arabic numerals "o" or "l" or any non-Arabic numerals.
  - c. Any symbols other than permissible symbols. Permissible symbols are limited to the following: diamond, half-diamond,

arrow, mill iron, cross, heart, box, triangle, quarter circle, bar, or star.

3. That involves any letters, numerals, or symbols within another letter, numeral, or symbol.
4. That is illegible when placed on the livestock.
5. That indicates placement upon each kind of livestock in other than a permissible location. Permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib, and the left and right hip. The permissible locations for other types of livestock must be established by the commissioner as necessary. The determination of permissible locations under this section may not be considered as a rule under chapter 28-32.

Notwithstanding any provisions of this section to the contrary, the commissioner shall accept for rerecording under section 36-09-09 any previously recorded livestock brand or mark.

SECTION 3. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless ~~such~~ the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany ~~such~~ the livestock to destination. In lieu of ~~such~~ the inspection, the owner or possessor may make and sign an invoice or waybill covering ~~such~~ the stock showing marks and brands, number, sex and kind of the stock and the consignee and market destination where official brand inspection is provided by or for the ~~said~~ stockmen's association and mail a copy of ~~such~~ the invoice or waybill to the association before the stock leaves the state.

It is unlawful for the owner or possessor to remove any ~~such~~ livestock from any place of ~~such~~ regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.

Any violation of A person who violates this section constitutes is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony.

Approved April 16, 1991  
Filed April 18, 1991



**CHAPTER 375**

HOUSE BILL NO. 1171  
(Committee on Transportation)  
(At the request of the Public Service Commission)

**WEIGHMASTERS**

AN ACT to repeal sections 36-06-04, 36-06-05, 36-06-05.1, 36-06-06, 36-06-07, 36-21-14, 36-21-16, 36-21-17, 60-09-01, 60-09-02, 60-09-04, 60-09-05, and 60-09-06 of the North Dakota Century Code, relating to issuance, fees, renewal, and revocation of weighmaster's licenses, weighing of livestock at a plant, remuneration of a weighmaster, issuance and revocation of grain elevator weighmaster's licenses, weighmaster's records, duties of a deputy weighmaster, and penalty for false weighing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 36-06-04, 36-06-05, 36-06-05.1, 36-06-06, 36-06-07, 36-21-14, 36-21-16, 36-21-17, 60-09-01, 60-09-02, 60-09-04, 60-09-05, and 60-09-06 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 376

SENATE BILL NO. 2378  
(Lips)

### UNATTENDED ANIMALS IN VEHICLES

AN ACT to create and enact a new section to chapter 36-21.1 of the North Dakota Century Code, relating to unattended animals in motor vehicles; to amend and reenact subsection 1 of section 36-21.1-06 of the North Dakota Century Code, relating to removing an unattended animal from a motor vehicle; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Unattended dog or cat in motor vehicle. No person may leave a dog or cat unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction.

SECTION 2. AMENDMENT. Subsection 1 of section 36-21.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal found abandoned, unjustifiably exposed to cold or inclement weather, or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 1 of this Act. It is a responsibility of such sheriff, police officer, licensed veterinarian, or investigator to care for the same until it is redeemed by the owner, and when necessary may deliver the animal to another person to be sheltered, cared for, and furnished suitable food and drink. In all cases the owner, if known, must be immediately notified, or if the owner is unknown, notice must be given by publication in the manner prescribed by law. Such notice must inform the owner that such animal may be sold pursuant to court order if the animal is not redeemed within five days after receiving the notice or after publication.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 377

HOUSE BILL NO. 1478  
(Representatives Boucher, Freier, Skjerven)  
(Senator Naaden)

### MEAT INSPECTION PILOT PROJECT

AN ACT relating to state meat inspection; to repeal chapter 36-23.1 of the North Dakota Century Code, relating to meat inspection; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Joint state and federal meat inspection service - Pilot project - Contracts. The commissioner of agriculture, in consultation with the board of animal health and the state department of health and consolidated laboratories, shall design and, if appropriate, implement a pilot project to institute a joint state and federal meat inspection service. The service must provide for the inspection of custom-exempt, retail-exempt, and distributor-exempt facilities not under full-time federal inspection. The commissioner may enter into contractual arrangements with the United States department of agriculture governing inspection personnel, salaries, benefits, travel reimbursements, equipment, and any other matters necessary for this section, but any contractual arrangement must expire on or before June 30, 1993.

SECTION 2. Project evaluation - Proposed legislation. By December 1, 1992, the commissioner shall determine whether the pilot project designed under section 1 of this Act should be continued or modified. If the determination is for continuance or modification, by December 10, 1992, the commissioner shall prepare and prefile for introduction appropriate legislation for consideration by the fifty-third legislative assembly.

SECTION 3. REPEAL. Chapter 36-23.1 of the North Dakota Century Code is repealed.

SECTION 4. EXPIRATION DATE. Sections 1 and 2 of this Act are effective through June 30, 1993, and after that date are ineffective.

Approved March 25, 1991  
Filed March 26, 1991

# LABOR AND EMPLOYMENT

## CHAPTER 365

SENATE BILL NO. 2349  
(Graba)

### CITY EMPLOYEE HOURS OF LABOR

AN ACT to repeal sections 34-01-08 and 34-01-09.1 of the North Dakota Century Code, relating to limitation on hours of labor of employees of a city over five thousand population and maximum hours of labor allowed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 34-01-08 and 34-01-09.1 of the North Dakota Century Code are repealed.

Approved March 25, 1991  
Filed March 26, 1991

# LIENS

## CHAPTER 366

HOUSE BILL NO. 1252  
(Ritter)

### COLLATERAL REAL ESTATE MORTGAGE DURATION

AN ACT to amend and reenact section 35-03-17 of the North Dakota Century Code, relating to collateral real estate mortgages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-03-17. Collateral real estate mortgages. A mortgage which contains the following statement in printed or typed capital letters: "THE PARTIES AGREE THAT THIS MORTGAGE CONSTITUTES A COLLATERAL REAL ESTATE MORTGAGE PURSUANT TO NORTH DAKOTA CENTURY CODE CHAPTER 35-03", is subject to the provisions of this section. A mortgage executed pursuant to this section must be entitled in printed or typed capital letters: "MORTGAGE - COLLATERAL REAL ESTATE MORTGAGE". A mortgage made pursuant to this section, notwithstanding the fact that from time to time during the term thereof no indebtedness is due from the mortgagor to the mortgagee, constitutes a continuing lien against the real property covered thereby for the amount stated in the mortgage. Any sums not exceeding the face amount of the mortgage, together with interest thereon as provided in the instrument secured by the mortgage, advanced by the mortgagee during the term of the mortgage have a lien priority as of the date the mortgage was filed. At any time the indebtedness due the mortgagee is zero, the mortgagor may demand in writing that the mortgage be satisfied, and the mortgagee shall within ten days thereafter execute and record a satisfaction thereof. Collateral real estate mortgages may be used to secure commercial, agricultural, or consumer loans or lines of credit including, but not limited to, revolving notes and credits and overdraft checking plans.

A filed collateral real estate mortgage which states a maturity date of the instrument secured thereby of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed collateral real estate mortgage is effective for a period of five years from the date of filing and thereafter for a period of sixty days. A filed collateral real estate mortgage which states that the instrument secured thereby is payable on demand is effective for five years from the date of filing and thereafter for a period of sixty days. The effectiveness of a filed collateral real estate mortgage lapses upon the expiration of the sixty-day period unless an addendum to the collateral real estate mortgage extending its effective date is filed prior to the lapse. If a filed collateral real estate mortgage exists at the time insolvency proceedings are commenced by or against the debtor, the mortgage remains effective until sixty days after termination of the insolvency proceeding or until expiration of the five-year period, whichever occurs later. Upon such lapse, the lien created by the collateral real estate mortgage terminates. An addendum

continuing the effectiveness of the lien of the collateral real estate mortgage may be filed by the mortgagee:

1. Within six months before and sixty days after a stated maturity date of five years or less; and
2. Otherwise within six months before and sixty days after the expiration of the five-year effective date period.

An addendum to a collateral real estate mortgage for the sole purpose of continuing the effectiveness of its lien need be signed only by the mortgagee. Upon the timely filing of such an addendum to a collateral real estate mortgage, the effectiveness of the collateral real estate mortgage will be continued for five years after the stated maturity date in those instances where the original collateral real estate mortgage provided a maturity date or for five years after the expiration of the five-year period whereupon it lapses in the same manner as provided above unless another addendum to the collateral real estate mortgage continuing the effectiveness of its lien is filed prior to such lapse. Succeeding addendums to collateral real estate mortgages may be filed in the same manner to continue the effectiveness of the lien of the collateral real estate mortgage.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 367

SENATE BILL NO. 2397  
(Holmberg)

### RESIDENTIAL MORTGAGE INFORMATION

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to the responsibility of mortgagees to provide information necessary to satisfy loans secured by mortgages on residential real property that is being sold; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is created and enacted as follows:

Request for information concerning payoff and escrow amounts - Penalty - Venue. Unless otherwise stated in the loan or mortgage, within seven business days after receipt of a written request that specifies the name of the owner of the property and the loan number assigned to a loan secured by a mortgage on residential real property and that indicates the information is necessary to close a sale of the property, the servicer of a loan secured by a mortgage on residential real property shall provide to the owner of the property or to that person's representative full information concerning the amount necessary on a date specified in the request to pay off the loan and of any amount held in escrow for payment of insurance premiums, taxes, and other costs relating to the real property. The servicer of the loan secured by a mortgage may not charge any fee for providing the information.

If the servicer of the loan fails to deposit with the United States postal service, facsimile, or deliver personally the information requested within seven business days after receipt of the written request for information and the closing date for sale of the property is postponed as a result of the delay, the servicer of the loan is liable to the owner of the property for all damages sustained because of the delay. Notwithstanding any other law, an action brought to recover damages under this section must be heard in the county where the real property is located or where the plaintiff resides if the residence is within this state.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 368

HOUSE BILL NO. 1526  
(Laughlin)

### REPAIRMEN'S LIENS

AN ACT to amend and reenact sections 35-13-01, 35-13-02, 35-13-03, and 35-13-04 of the North Dakota Century Code, relating to repairmen's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-13-01. Repairman's lien authorized. Any blacksmith, machinist, farm equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business within this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien thereon, and on any accessories and parts placed upon the property, for reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed one thousand dollars or twenty-five percent or, two thousand five hundred dollars or twenty-five percent for property used for agricultural purposes, of the value of the property, in its repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

SECTION 2. AMENDMENT. Section 35-13-02 of the North Dakota Century Code is amended and reenacted as follows:

35-13-02. Lien statement - Contents - When required - Filing. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:

1. The labor performed.
2. The materials furnished.



3. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
4. The name of the person for whom the labor was performed or to whom the materials were furnished.
5. A description of the property upon which the lien is claimed.

A person filing a verified statement shall within ~~twenty~~ thirty days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.

SECTION 3. AMENDMENT. Section 35-13-03 of the North Dakota Century Code is amended and reenacted as follows:

35-13-03. Separate articles of personal property may be included in one lien statement. Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor may include all the articles of personal property so made, altered, or repaired within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, preceding the filing of the lien statement in the same statement, and the statement has the same force and effect as though a separate statement had been filed for each article.

SECTION 4. AMENDMENT. Section 35-13-04 of the North Dakota Century Code is amended and reenacted as follows:

35-13-04. Priority of lien. A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the mechanic's repairman's lien up to one thousand dollars or twenty-five percent or, ~~two thousand five hundred dollars or twenty-five percent~~ for property used for agricultural purposes, of the retail value, whichever is greater, in its repaired condition, has priority over the mortgage or financing statement.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 369

HOUSE BILL NO. 1538  
(Laughlin, Brokaw)

### AGRICULTURAL SUPPLIERS' LIENS

AN ACT to amend and reenact section 35-31-02 of the North Dakota Century Code, relating to filing of agricultural supplier's lien statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien. To obtain an agricultural supplier's lien, the person entitled to the lien, within ~~ninety~~ one hundred twenty days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the county or counties in which the crop, agricultural product, or livestock was grown. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.

Approved April 8, 1991  
Filed April 8, 1991

\* NOTE: Section 35-31-02 was also amended by section 10 of Senate Bill No. 2024, chapter 449.

## CHAPTER 370

HOUSE BILL NO. 1383  
(Rennerfeldt, Schmidt, Porter)

### **AIRCRAFT REPAIR AND MAINTENANCE LIENS**

AN ACT to provide for the creation of an aircraft repair and maintenance lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Aircraft repair and maintenance lien authorized. Any person who repairs or performs maintenance work on an aircraft has a lien on the aircraft for:

1. The amount due under a contract for the repairs or maintenance work; or
2. If no amount is specified by contract, the reasonable and usual compensation for the repairs or maintenance work.

SECTION 2. Possession of aircraft.

1. A holder of a lien under this chapter may retain possession of the aircraft subject to the lien until the amount due is paid.
2. Except as provided in subsection 3, if the holder of a lien under this chapter relinquishes possession of the aircraft before the amount due is paid, that person may retake possession of the aircraft as provided by section 41-09-49.
3. The holder of a lien under this chapter may not retake possession of the aircraft from a bona fide purchaser for value who, before the date the lien is recorded under section 3 of this Act, purchases the aircraft without knowledge of the lien.

SECTION 3. Recording of lien. The holder of a lien under this chapter may record the lien on the aircraft by filing with the federal aviation administration aircraft registry not later than the ninetieth day after the date of performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations. The document must include:

1. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
2. The amount due for repairs or maintenance.
3. A complete description of the aircraft.

4. The name and address of the owner of the aircraft and the number assigned the aircraft by the federal aviation administration, if known.

SECTION 4. Notice to owner and lienholders.

1. The holder of a lien under sections 1 through 6 of this Act who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown on the records maintained for that purpose by the federal aviation administration aircraft registry not later than the thirtieth day after the date or performance of the last repair or maintenance. This notice must include:
  - a. The name, address, and telephone number of the holder of the lien under sections 1 through 6 of this Act.
  - b. The amount due for repairs or maintenance.
  - c. A complete description of the aircraft.
  - d. A statement describing the legal right of the holder of the lien under sections 1 through 6 of this Act to sell the aircraft at public auction and apply the proceeds to the amount due.
2. The notice must be delivered by registered mail.

SECTION 5. Sale of aircraft authorized. If the holder of a lien under sections 1 through 6 of this Act provides the notice required by section 4 of this Act and the amount due remains unpaid after the sixtieth day after the date of performance of the last repair or maintenance, the holder of the lien may sell the aircraft at a public sale if the court finds that the amount due is the amount specified by contract or the reasonable and usual compensation for the repairs or maintenance work performed and the holder may then apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

SECTION 6. Attorneys' fees. The court in a suit brought under sections 1 through 6 of this Act may award reasonable attorneys' fees to the prevailing party.

Approved April 16, 1991  
Filed April 18, 1991

# LIVESTOCK

## CHAPTER 371

SENATE BILL NO. 2221

(Committee on Agriculture)

(At the request of the State Board of Animal Health)

### ANIMAL HEALTH DUTIES

AN ACT to create and enact a new section to chapter 36-01 of the North Dakota Century Code, relating to definitions; and to amend and reenact sections 36-01-08, 36-01-12, 36-01-13, 36-01-14, 36-01-17, and 36-01-19 of the North Dakota Century Code, relating to duties of the state board of animal health, powers of the state board of animal health over contagious and infectious diseases, diseased animals to be reported to the board, protest of killing of diseased animals, oaths and examinations, and the emergency fund in case of epizootic.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Captive wildlife" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries or an animal that is physically altered to limit movement and facilitate capture.
2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, or swine.

SECTION 2. AMENDMENT. Section 36-01-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08. Duties of board - Rules. The state board of animal health shall protect the health of the domestic animals and captive wildlife of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and captive wildlife of this state. The board may make rules for the conduct of its business and to carry into effect the purposes of this chapter and other duties prescribed in this title. The rules of the state board of animal health must be adopted in accordance with chapter 28-32.

SECTION 3. AMENDMENT. Section 36-01-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-12. Powers of board over contagious and infectious diseases. The state board of animal health may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious

diseases among any of the domestic animals and captive wildlife of this state. For this purpose, the board may quarantine any domestic animal or captive wildlife which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal or captive wildlife found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal or captive wildlife therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

SECTION 4. AMENDMENT. Section 36-01-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal or captive wildlife belonging to that person or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The state board of animal health or any member of the board;
2. The state veterinarian or any other agent or representative of the state board of animal health; or
3. Any law enforcement officer of the county or city in which the animal is present. If a report is made to a law enforcement officer under this subsection, the officer shall report the facts immediately to the state board of animal health, the state veterinarian, or another agent or representative of the state board of animal health and failure to do so constitutes a violation of the provisions of this chapter.

SECTION 5. AMENDMENT. Section 36-01-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal or captive wildlife has been determined to be affected with a contagious or infectious disease and has been ordered killed by the state board of animal health, the state veterinarian, or an agent or representative of the state board of animal health, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered or certified mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving notice of the order, the owner or keeper may file a protest against the killing of the animal with the board or with the person who has ordered the animal killed. The protest must state under oath, that to the best of the knowledge and belief of the person making the protest, the animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All the experts must

be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 6. AMENDMENT. Section 36-01-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-17. Oaths and examinations. The state board of animal health, any member of the board, the state veterinarian, or any authorized agent or representative of the board, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals or captive wildlife. For this purpose, the board, members of the board, the state veterinarian, and any authorized agent or representative of the board, shall have the power to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and the fees must be paid by the board from moneys appropriated to it.

SECTION 7. AMENDMENT. Section 36-01-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-19. Emergency fund in case of epizootic. In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals or captive wildlife, which cannot be controlled with the funds at the disposal of the state board of animal health, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 372

SENATE BILL NO. 2145  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK DEALER LICENSE AND BOND

AN ACT to amend and reenact sections 36-04-03 and 36-04-05 of the North Dakota Century Code, relating to licensing and bonds of livestock dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-04-03 of the North Dakota Century Code is amended and reenacted as follows:

36-04-03. Dealer's license required - Agent designation and licensure - Suitability for licensure - Liability of owner for agent's acts.

1. All dealers and agents must be licensed as provided in this chapter.
2. No agent may act for any dealer unless the dealer is licensed and has designated such agent to act in the dealer's behalf and has notified the department of the appointment in the dealer's application for a license or in a separate written instrument and requested the department to issue to such agent an agent's license in such form as may be prescribed by the commissioner and has signed a statement in substantially the following form:

I, the undersigned applicant for a North Dakota livestock dealer's license, understand that I am strictly responsible for and will be held strictly liable for all acts, omissions, or failures arising out of livestock dealings of the agent(s) listed above, whether or not the dealings have been personally authorized by me.

3. No dealer may designate as an agent any person who has been denied a dealer's or agent's license or has had a dealer's or agent's license revoked for any reason or has otherwise acted in a manner which would be in violation of this chapter, except upon a determination by the commissioner that the person is sufficiently rehabilitated to serve the public as a dealer's agent and that the person does not owe any debt to any livestock seller or auction market. Conviction of an offense as defined by section 12.1-01-04, does not disqualify a person from licensure unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer's agent or that the person is not at present sufficiently rehabilitated under section 12.1-33-02.1.



4. Agents may not deal in their own names or issue a check or any other commercial paper except in the name of their principals when acting as an agent. A dealer is accountable and responsible for all the acts arising out of livestock dealings of a designated agent, whether authorized or unauthorized by the dealer.

SECTION 2. AMENDMENT. Section 36-04-05 of the North Dakota Century Code is amended and reenacted as follows:

36-04-05. Dealer to file bond with department - Additional bond may be required. Each applicant for a license under this chapter shall file with the application a bond issued by an approved surety company. The department must be named as the obligee in each bond but the bond will be held for the purpose of protecting and for the benefit of any person selling livestock or wool, as the case may be, to the licensed dealer or the dealer's agent. The bond must be conditioned for:

1. The faithful performance by the dealer and the dealer's designated agent of the duties as such;
2. The compliance by the dealer and the dealer's designated agent with all of the provisions of this code relating to the purchase of livestock or wool, as the case may be;
3. The full and complete payment to the seller for all livestock or wool purchased by the dealer or the dealer's designated agent; and
4. The full protection of any person who deals with the dealer or the dealer's designated agent.

Each bond must cover the license period of the dealer or such greater time as the commissioner may prescribe and must be approved as to amount, form, and sufficiency by the department. The minimum amount of bond is ten thousand dollars, and must be for any greater amount as may be determined by computing the amount of bond on the same basis as prescribed for dealers subject to the provisions of the Packers and Stockyards Act, 1921 [Pub. L. 67-51; 42 Stat. 159; 7 U.S.C. 181 et seq.]. The department may demand an additional or increased bond whenever in its judgment the volume of business of the principal warrants such demand.

In lieu of the bond required of dealers under this section, the applicant may file with the department the dealer's bond filed by that applicant with the United States department of agriculture and in effect pursuant to the Packers and Stockyards Act, 1921, naming the commissioner as the trustee of such bond. Bonds from out-of-state applicants may be in favor of a trustee who is a financially responsible, disinterested person satisfactory to the commissioner. The minimum amount of such bond is ten thousand dollars, unless the department determines that the amount of such bond is insufficient in any instance, in which event the department shall require the reasonable amount of the bond required to protect the public interest.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 373

SENATE BILL NO. 2132  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK DEALER PENALTIES

AN ACT to amend and reenact section 36-04-21 of the North Dakota Century Code, relating to adjudication of civil penalties for violations of livestock dealers laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-04-21 of the North Dakota Century Code is amended and reenacted as follows:

36-04-21. Penalties - Criminal - Civil - Injunctions.

1. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 374

SENATE BILL NO. 2149  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### LIVESTOCK BRANDS AND AUCTION MARKETS

AN ACT to amend and reenact sections 36-05-05, 36-09-02.1, and 36-09-23 of the North Dakota Century Code, relating to the expiration and renewal of livestock auction market licenses, standards for recording livestock brands or marks, and brand inspections; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-05-05 of the North Dakota Century Code is amended and reenacted as follows:

36-05-05. Expiration and renewal of license - Fee returned upon failure to issue or renew license. Each license issued under this chapter expires on the thirty-first day of ~~January~~ March next following the date of issuance ~~thereof~~. Each license must be renewed annually on or before ~~January~~ March thirty-first. The fee for a renewal license is the same as that prescribed for an original license. If the commissioner does not issue a requested original license or renewal license, the fee paid must be refunded to the applicant. Licenses issued in 1991 extend until March 1992.

SECTION 2. AMENDMENT. Section 36-09-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks. The commissioner shall record the brand or mark described in the application except that the commissioner shall refuse to record any brand or mark:

1. That has been previously recorded in favor of another person or one that is deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.
2. That contains less than two characters, except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:
  - a. The letters "g" or "q" or letters that are not in the gothic style.
  - b. The Arabic numerals "o" or "l" or any non-Arabic numerals.
  - c. Any symbols other than permissible symbols. Permissible symbols are limited to the following: diamond, half-diamond,

arrow, mill iron, cross, heart, box, triangle, quarter circle, bar, or star.

3. That involves any letters, numerals, or symbols within another letter, numeral, or symbol.
4. That is illegible when placed on the livestock.
5. That indicates placement upon each kind of livestock in other than a permissible location. Permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib, and the left and right hip. The permissible locations for other types of livestock must be established by the commissioner as necessary. The determination of permissible locations under this section may not be considered as a rule under chapter 28-32.

Notwithstanding any provisions of this section to the contrary, the commissioner shall accept for rerecording under section 36-09-09 any previously recorded livestock brand or mark.

SECTION 3. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless ~~such~~ the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany ~~such~~ the livestock to destination. In lieu of ~~such~~ the inspection, the owner or possessor may make and sign an invoice or waybill covering ~~such~~ the stock showing marks and brands, number, sex and kind of the stock and the consignee and market destination where official brand inspection is provided by or for the ~~said~~ stockmen's association and mail a copy of ~~such~~ the invoice or waybill to the association before the stock leaves the state.

It is unlawful for the owner or possessor to remove any ~~such~~ livestock from any place of ~~such~~ regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.

Any violation of A person who violates this section constitutes is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony.

Approved April 16, 1991  
Filed April 18, 1991

**CHAPTER 375**

HOUSE BILL NO. 1171  
(Committee on Transportation)  
(At the request of the Public Service Commission)

**WEIGHMASTERS**

AN ACT to repeal sections 36-06-04, 36-06-05, 36-06-05.1, 36-06-06, 36-06-07, 36-21-14, 36-21-16, 36-21-17, 60-09-01, 60-09-02, 60-09-04, 60-09-05, and 60-09-06 of the North Dakota Century Code, relating to issuance, fees, renewal, and revocation of weighmaster's licenses, weighing of livestock at a plant, remuneration of a weighmaster, issuance and revocation of grain elevator weighmaster's licenses, weighmaster's records, duties of a deputy weighmaster, and penalty for false weighing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 36-06-04, 36-06-05, 36-06-05.1, 36-06-06, 36-06-07, 36-21-14, 36-21-16, 36-21-17, 60-09-01, 60-09-02, 60-09-04, 60-09-05, and 60-09-06 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 376

SENATE BILL NO. 2378  
(Lips)

### UNATTENDED ANIMALS IN VEHICLES

AN ACT to create and enact a new section to chapter 36-21.1 of the North Dakota Century Code, relating to unattended animals in motor vehicles; to amend and reenact subsection 1 of section 36-21.1-06 of the North Dakota Century Code, relating to removing an unattended animal from a motor vehicle; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Unattended dog or cat in motor vehicle. No person may leave a dog or cat unattended in a stationary or parked motor vehicle in a manner that endangers the animal's health or safety. Any person who violates this section is guilty of an infraction.

SECTION 2. AMENDMENT. Subsection 1 of section 36-21.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal found abandoned, unjustifiably exposed to cold or inclement weather, or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 1 of this Act. It is a responsibility of such sheriff, police officer, licensed veterinarian, or investigator to care for the same until it is redeemed by the owner, and when necessary may deliver the animal to another person to be sheltered, cared for, and furnished suitable food and drink. In all cases the owner, if known, must be immediately notified, or if the owner is unknown, notice must be given by publication in the manner prescribed by law. Such notice must inform the owner that such animal may be sold pursuant to court order if the animal is not redeemed within five days after receiving the notice or after publication.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 377

HOUSE BILL NO. 1478  
(Representatives Boucher, Freier, Skjerven)  
(Senator Naaden)

### MEAT INSPECTION PILOT PROJECT

AN ACT relating to state meat inspection; to repeal chapter 36-23.1 of the North Dakota Century Code, relating to meat inspection; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Joint state and federal meat inspection service - Pilot project - Contracts. The commissioner of agriculture, in consultation with the board of animal health and the state department of health and consolidated laboratories, shall design and, if appropriate, implement a pilot project to institute a joint state and federal meat inspection service. The service must provide for the inspection of custom-exempt, retail-exempt, and distributor-exempt facilities not under full-time federal inspection. The commissioner may enter into contractual arrangements with the United States department of agriculture governing inspection personnel, salaries, benefits, travel reimbursements, equipment, and any other matters necessary for this section, but any contractual arrangement must expire on or before June 30, 1993.

SECTION 2. Project evaluation - Proposed legislation. By December 1, 1992, the commissioner shall determine whether the pilot project designed under section 1 of this Act should be continued or modified. If the determination is for continuance or modification, by December 10, 1992, the commissioner shall prepare and prefile for introduction appropriate legislation for consideration by the fifty-third legislative assembly.

SECTION 3. REPEAL. Chapter 36-23.1 of the North Dakota Century Code is repealed.

SECTION 4. EXPIRATION DATE. Sections 1 and 2 of this Act are effective through June 30, 1993, and after that date are ineffective.

Approved March 25, 1991  
Filed March 26, 1991

# MILITARY

## CHAPTER 378

HOUSE BILL NO. 1088  
(Committee on Human Services and Veterans Affairs)  
(At the request of the National Guard)

### VETERANS' CEMETERY

AN ACT to amend and reenact section 37-03-14 of the North Dakota Century Code, relating to the North Dakota veterans' cemetery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 37-03-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-03-14. North Dakota veterans' cemetery - Administration. The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. All moneys received from private or federal sources must be paid into a veterans' cemetery maintenance fund. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the state parks and recreation department for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

Approved March 8, 1991  
Filed March 8, 1991

\* NOTE: Section 37-03-14 was also amended by section 6 of Senate Bill No. 2054, chapter 640.



## CHAPTER 379

HOUSE BILL NO. 1181  
(Committee on State and Federal Government)  
(At the request of the National Guard)

### NATIONAL GUARD LAND SALES

AN ACT to amend and reenact section 37-10-03.2 of the North Dakota Century Code, relating to the sale of military lands by the adjutant general; and to repeal section 37-10-03.1 of the North Dakota Century Code, relating to the sale of military lands by the adjutant general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-10-03.2 of the North Dakota Century Code is amended and reenacted as follows:

37-10-03.2. Exchange, sale, and lease of military lands. The adjutant general may exchange or sell lands owned by the state of North Dakota and used for military purposes with other agencies of the state, counties, municipalities or other political subdivisions, corporations or individuals, and may purchase, within funds available, parcels of land necessary for the construction of armories or the expansion of present military installations in the state of North Dakota. Sales must be made under the provisions of sections 54-01-05.1 and 54-01-05.2 and all net proceeds of sales must be placed in the national guard training area and facility development trust fund. The adjutant general may lease parts of military installations to the department of defense or other agencies of the federal government.

SECTION 2. REPEAL. Section 37-10-03.1 of the North Dakota Century Code is repealed.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 380

SENATE BILL NO. 2192  
(Committee on Appropriations)  
(At the request of the Division of Emergency Management)

### DISASTER RECOVERY FUNDING

AN ACT to create and enact a new section to chapter 37-17 of the North Dakota Century Code, relating to the establishment of a method to fund the state match required to assist state and local governments to recover from a major disaster or emergency, expanded duties and responsibilities of the division of emergency management and the emergency commission, and a loan from the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17 of the North Dakota Century Code is created and enacted as follows:

Disaster or emergency recovery funding - Loan authorization. When approved by the emergency commission, the division of emergency management is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of emergency management shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:

1. Approval to make an application for a loan from the Bank of North Dakota;
2. Approval for additional personnel required to perform the anticipated recovery activities; and
3. Authority to spend additional state and federal funds for the recovery program.

If the request is acceptable, the emergency commission shall approve the request and issue a notice of their action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. The emergency commission is authorized to repay the loan utilizing federal recovery administrative reimbursements to the state under Public Law 93-288, as amended, and any other moneys remaining in the contingency fund. If at the

end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 381

SENATE BILL NO. 2152  
(Committee on State and Federal Government)  
(At the request of the Division of Emergency Management)

### MUTUAL AID AGREEMENTS

AN ACT to create and enact four new sections to chapter 37-17.1 of the North Dakota Century Code, relating to mutual aid agreements between political subdivisions and between North Dakota and other states or provinces in times of an actual or potential disaster or emergency situation or incident.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Mutual aid - Cooperation.

1. The division of emergency management shall encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies within the state for reciprocal aid and assistance in responding to and recovering from actual and potential disasters or emergencies.
2. In reviewing emergency operations plans and programs of political subdivisions, the division of emergency management shall consider whether they contain adequate provisions for mutual aid.
3. Local emergency management organizations may assist in negotiation of mutual aid agreements between the governor and an adjoining state or province or a political subdivision of an adjoining state or province and shall carry out arrangements of any such agreements relating to the local political subdivision.

SECTION 2. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Interstate mutual aid agreements.

1. This state may enter into an interstate mutual aid agreement or compact with any state that has enacted or shall enact the compact substantially in the form contained in section 4 of this Act.
2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster preparedness, mitigation, response, and recovery.

3. The governor may deny the request of a requesting state as the governor determines necessary.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency preparedness, response, recovery, or mitigation must be reviewed and made current every four years.
5. If a person holds a license, certificate, or other permit issued by any state or political subdivision evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster, and this state shall give due recognition to the license, certificate, or other permit.
6. When considered of mutual benefit, the governor may, subject to the limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster or emergency resources.

SECTION 3. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Authority to join interstate mutual aid agreements - Interstate compacts.

1. The governor, in the name of the state, may join with other states in the interstate mutual aid agreement or compact.
2. The governor may negotiate and execute such supplemental agreements as may be necessary and proper to fully carry out the terms and provisions of the interstate mutual aid agreement or compact as set forth in section 4 of this Act.

SECTION 4. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Text of the mutual aid agreement or compact. The interstate mutual aid agreement or compact referred to in sections 2 and 3 of this Act reads as follows:

#### INTERSTATE MUTUAL AID AGREEMENT OR COMPACT

##### Article I

The purpose of this agreement or compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster or emergency that overextends the ability of local and state governments to reduce, counteract, or remove the threat to lives, property, or the environment. Assistance may include rescue, fire, law enforcement, health and medical, communications, and transportation resources to cope with problems that require use of special equipment, trained personnel, or personnel in large numbers not locally available.

##### Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with other states, subject to the consent of Congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 and the executive branch, by issuance of Executive Order No. 10186

of December 1, 1950, encourage states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

#### Article III

It is agreed by participating states that the following conditions will guide implementation of the mutual aid agreement or compact:

1. Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the disaster or emergency and other resources are not immediately available and the governor of the aiding state agrees to the request.
2. Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request must provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.
3. Personnel and equipment of the aiding state made available to the requesting state must, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.
4. An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

#### Article IV

1. The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.
2. Any state rendering aid pursuant to the mutual aid agreement must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such request.
3. Any state rendering aid pursuant to this agreement or compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments must be made in the same manner and on the same terms as if the injury or death was sustained within the aiding state.

#### Article V

1. All privileges and immunities from liability, exemptions from law, ordinance, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective

functions within territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this agreement.

2. All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this agreement or compact. "Volunteers", as used in this subsection, includes physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue or hazardous materials teams, volunteers, or personnel.
3. The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.
4. Nothing in this agreement may be construed as repealing or impairing any existing interstate mutual aid agreements.
5. Upon enactment of this agreement by two or more states, and annually by each January thereafter, the participating states will exchange with each other the names of officials designated to request and provide service under this arrangement. In accordance with the cooperative nature of this agreement, it is permissible and desirable for states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.
6. This agreement becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Therefore, this agreement becomes effective and binding on any other state upon similar action by such state.
7. This agreement remains binding upon a party state until it enacts a law repealing the agreement and providing for the sending of formal written notice of withdrawal from the agreement to the appropriate officials of all other party states. An actual withdrawal may not take effect until the thirtieth consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this agreement prior to the effective date of the withdrawal.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 382

SENATE BILL NO. 2188  
(Committee on Natural Resources)  
(At the request of the Division of Emergency Management)

### HAZARDOUS CHEMICALS PREPAREDNESS

AN ACT to provide for the establishment of a program to carry out the provisions of the Emergency Planning and Community Right-to-Know Act of 1986, expanded duties of the division of emergency management, a facility fee system, a state and local hazardous chemicals fund or account, and the expenditure of special funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Hazardous chemicals preparedness and response program.

1. Program components.

- a. State emergency response commission. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
- b. In conjunction with the state emergency response commission, the local emergency planning committees, and the local emergency management organizations, the division of emergency management shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
- c. The director of the division of emergency management shall serve as the chairperson of the state emergency response commission. In the absence of the chairperson, the designated vice chairperson shall serve as chairperson. The chairperson shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairperson shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of emergency management.
- d. Facility reporting. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of emergency management as



required by SARA title III, which shall establish and maintain the state repository for these reports.

2. Establishment of funds.

- a. State hazardous chemicals preparedness and response fund. There is hereby created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of emergency management for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. County hazardous chemicals preparedness and response account. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Facility fee system. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of emergency management by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA, title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR Section 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of emergency management shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.
- d. Exemptions. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. Accept funding. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response program.
- f. Definition. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.

- g. Termination of fee system. The fee system in this section terminates ten years after the effective date of this Act unless reestablished by the legislative assembly by statute.
  - h. City fee system. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
3. Recovery of response costs.
- a. General rule. A person who causes a release, as defined in 40 CFR 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in 40 CFR 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
  - b. Amount. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
4. Penalties and fines.
- a. Civil fines. A person who violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], or fails to pay a state hazardous chemicals fee is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.
  - b. Criminal penalty. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous chemicals response personnel attempting to perform

duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. Enforcement.

- a. If the director of the division of emergency management determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief.
- b. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 383

HOUSE BILL NO. 1106  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Veterans' Affairs)

### VETERANS ASSISTANCE FUND ACCEPTANCE

AN ACT to amend and reenact section 37-18-04 of the North Dakota Century Code, relating to the duties of the commissioner of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-18-04 of the North Dakota Century Code is amended and reenacted as follows:

37-18-04. Duties of commissioner. It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of and implement programs and benefits authorized by statute; to assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; to advise and assist veterans in taking advantage of the provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures afforded by the federal government; to assist, supervise, advise, and direct the work of county service officers; to assist county service officers in the formation of county service to veterans' committees and to outline, assist, and direct the activities of such committees; to disseminate information and to do any and all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

The department of veterans' affairs may accept and expend funds from any source, including federal or private sources and interest earnings from the veterans' postwar trust fund, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law, incurred pursuant to hearings covered in section 37-19.1-04 or incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs or the emergency commission.

The department of veterans' affairs may receive from the United States government such records of veterans as the United States government may wish to turn over to the department of veterans' affairs and same shall keep and maintain such records as hereafter provided by this chapter.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 384

HOUSE BILL NO. 1142  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Veterans' Affairs)

### VETERAN'S PREFERENCE HEARING PROCEDURES

AN ACT to amend and reenact section 37-19.1-04 of the North Dakota Century Code, relating to hearing procedures for veteran's preference grievance hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant is not given the preference provided in sections 37-19.1-02 or 37-19.1-03, ~~he may,~~ the applicant within fifteen days after ~~he~~ notification by certified mail that employment has been refused ~~employment, demand,~~ may request a hearing before a board composed hearing officer as provided in subsection 3. The ~~demand~~ request must be in writing and must be delivered to the employing agency commissioner of veterans' affairs by certified mail with return receipt requested. ~~If the board finds in favor of the veteran or spouse, they are~~ The applicant is entitled to immediate employment in the position for which ~~he had~~ application was originally made application, or an equivalent position, if the hearing officer finds in favor of the applicant.
2. Any veteran person who has exercised ~~his~~ the right to an employment preference under this chapter, and who, within one year after exercise of that right:
  - a. Is discharged;
  - b. Has had ~~his~~ compensation reduced; or
  - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit ~~his~~ employment,

is entitled to a hearing if ~~he~~ the person believes that the employing agency took any of the above-described action due to the veteran's exercise of ~~his~~ employment preference, the. The hearing must be held before a board composed the hearing officer as provided in subsection 3. If the board hearing officer finds that the employing agency took any of the actions described in

subdivisions a, b, or c due to the veteran's person's exercise of his the right to an employment preference, the board hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The demand request for a hearing under this subsection must be in writing addressed to the employing agency commissioner of veterans' affairs. The demand request must be made by certified mail with return receipt requested within fifteen days after discharge or any other action described in subdivisions a, b, or c is taken by the employing agency about which the veteran may be aggrieved.

3. The hearing board for At the request of the commissioner of veterans' affairs, the attorney general shall appoint a hearing officer knowledgeable in personnel administration to hear grievances arising under subsection 1 or 2 shall consist of one person chosen by the veteran, one person chosen by the employing agency, and one person chosen by the foregoing two persons. In the event that the two persons appointed by the parties do not appoint a third person within five days after the appointment of the two, a district judge for that judicial district shall make the appointment after receiving a written request to do so from one or both of the other appointees, or from the veteran. In the event that the employing agency does not appoint a person to the board within five days after the appointment by the veteran, a district judge for that judicial district shall make the appointment after receiving written request to do so from the veteran. The hearing officer is entitled to be reimbursed by the employing agency for expenses incurred in performing these duties. The board hearing officer shall meet and hold the hearing within ten fifteen days after the selection of the final member hearing is requested by the commissioner of veterans' affairs. At the hearing, both parties may be represented by counsel, and. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which it is shown by the veteran to have was taken was not taken because of the veteran's exercise of his the right to an employment preference. Hearing board members may not be compensated, nor may their expenses be paid, from public funds. The hearing officer shall issue findings and an order within fifteen days after the hearing is concluded. The order is binding on both parties, subject to appeal.
4. Any party aggrieved by the finding and order of the board hearing officer may appeal to the district court in the manner provided for in section 28-32-15 chapter 28-32, provided that notice of appeal need only be served on the other party, and the appellant need not execute an undertaking. The Any party aggrieved by the decision of the district court on appeal is final may appeal that decision to the supreme court as provided in chapter 28-32. Appeals to the district court under this subsection must be heard without a jury.

## CHAPTER 385

SENATE BILL NO. 2596  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)  
(Approved by the Committee on Delayed Bills)

### VETERANS COMPENSATION

AN ACT to provide for adjusted compensation for eligible veterans of Operation Desert Shield and Operation Desert Storm and for the method of filing and payment of claims, duties of the adjutant general, and exemption from taxation and execution for such payments; to provide a penalty; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of public purpose. In order to ease the financial hardships and personal and family sacrifices sustained by those North Dakota members of the national guard and reserve component personnel who were activated for Operation Desert Shield and Operation Desert Storm in the Persian Gulf, it is the intent of the legislative assembly that additional compensation be provided to those resident veterans of North Dakota who were activated under 10 U.S.C. 673 or 10 U.S.C. 673(b), and payment of that compensation is declared to be a public purpose. It is the further intent of the legislative assembly to encourage those North Dakota resident veterans of Operation Desert Shield and Operation Desert Storm to continue their voluntary membership in the national guard and other reserve components.

SECTION 2. Definitions. As used in this Act:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
  - a. The surviving unremarried husband or wife as of the date of signing the application;
  - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
  - c. The surviving person standing in loco parentis; or
  - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran during the period of service anywhere in the Persian Gulf theatre.

5. "Honorable and faithful" means service evidenced by:
  - a. An honorable discharge, or its equivalent;
  - b. In the case of an officer, a certificate of service; and
  - c. In the case of a veteran who has not been discharged, a certificate from appropriate service authority that the veteran's service was honorable and faithful.
6. "Period of service" means the period of time beginning August 2, 1990, and ending on a date prescribed by the president or the Congress for the cessation of hostilities in the Persian Gulf.
7. "Resident" means a person who:
  - a. Was born in and lived in the state of North Dakota until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside the state of North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States; or
  - c. Was born elsewhere but had resided within the state of North Dakota for the last six months before entrance into military service and had prior to or during that six-month period:
    - (1) Voted in the state of North Dakota;
    - (2) Was an emancipated minor during such period of residence or had lived with a parent or person standing in loco parentis who was a resident; or
    - (3) Was not registered for voting in another state after being a resident.
  - d. "Resident" also means a veteran who was a bona fide resident of the state of North Dakota at the time of entering the armed forces, as determined under the rules of the adjutant general and the laws of this state. A person is not a resident of North Dakota for the purpose of receiving any benefits under this Act if the person was on continuous active duty in the armed forces, immediately prior to August 2, 1990, and has not established actual abode in North Dakota prior to the effective date of this Act.
8. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 673 or 10 U.S.C. 673(b) and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 3.** Payment of adjusted compensation for domestic and foreign service. Each veteran is entitled to fifty dollars for each month or major



fraction thereof for domestic service and one hundred dollars for each month or major fraction thereof for foreign service. If the veteran received a Purple Heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this Act to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general after April 1, 1991, but not later than six months after the end of the period of service.

**SECTION 4. Payment to beneficiary of veteran who died in active service.** In the case of a veteran who died as a result of active service during the period of service, the beneficiary of such veteran is entitled to a payment of two thousand five hundred dollars in lieu of any other compensation under this Act.

**SECTION 5. Application.** Each veteran or veteran's beneficiary entitled to payment under this Act shall make application to the adjutant general of the state of North Dakota upon a form prescribed by the adjutant general. If the veteran is incompetent or the veteran's beneficiary is incompetent or a minor, application may be made by the guardian of the veteran or beneficiary, and if there is no guardian the person determined by the adjutant general to have assumed the major responsibility for the care of the veteran or beneficiary and to be a proper person to receive payment for the veteran or beneficiary may make the application. If a veteran is hospitalized in a state, county, or federal institution and no application has otherwise been approved by the adjutant general the person in charge of such institution may make the application with the approval of the adjutant general. For the purpose of this section, the word "minor" does not include the unremarried spouse of a veteran. Each application must be accompanied by a certified copy of honorable discharge or other evidence of honorable and faithful service. Each application must be subscribed and sworn to by the applicant in such manner as may be prescribed by the adjutant general. The adjutant general shall provide by rule for an endorsement of the evidence of honorable and faithful service if application for payment has been made.

**SECTION 6. Method of payment - Deduction of sums due veterans aid fund.** Upon submission of satisfactory proof that the applicant is entitled to payment under this Act, the adjutant general shall compute the amount of payment due the applicant, make a record thereof, and forward a voucher for the payment to the office of management and budget, which shall cause the warrant-check to be issued for the amount of the claim. Payment must be made from funds appropriated by the legislative assembly. If the veteran or the applicant for payment under this Act is indebted to the veterans' aid fund of the state of North Dakota, the adjutant general shall determine the amount of such indebtedness and certify such determination to the office of management and budget together with the record of payment due. Within the limits of the payment due, the amount of such indebtedness must be paid to the veterans' aid fund and the applicant must be paid any remainder to which the veteran is entitled.

**SECTION 7. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this Act are exempt from all state and local taxes and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this Act is void and payment to the veteran may not be

denied because of any sums owed to the state or any political subdivisions except as provided in section 6 of this Act.

**SECTION 8. Duty of adjutant general - Finality of decisions - Questions of residence subject to court review.** The adjutant general shall administer this Act. The adjutant general shall prepare and distribute application blanks and investigate all claims and applications filed. If the adjutant general is satisfied of the proof of a claim and application, the adjutant general shall approve and direct payment of the claim. The adjutant general may adopt any rules necessary to the efficient administration of this Act. The necessary books, papers, records, cases, and equipment used in the administration of this Act shall become a part of the permanent records of the office of the adjutant general. The adjutant general may determine any claim in any case if doubt arises as to the eligibility of an applicant to receive payment and the decision of the adjutant general in such case is final, except on questions or residence which are subject to review by a court of competent jurisdiction. The adjutant general shall authorize payment for prisoners of war upon their release and return.

**SECTION 9. Penalty for false statement.** Any person who willfully makes a false statement in the application for benefits under this Act is guilty of a class A misdemeanor.

**SECTION 10. APPROPRIATION.** There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$600,000, or so much thereof as may be necessary, to make payment of adjusted compensation to veterans in accordance with the provisions of this Act, for the period from the effective date of this Act through June 30, 1993.

**SECTION 11. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

# MINING AND GAS AND OIL PRODUCTION

## CHAPTER 386

SENATE BILL NO. 2303  
(Senators Keller, Freborg)  
(Representatives Bodine, Urlacher)

### COAL MINING ROAD CLOSURE

AN ACT to create and enact two new sections to chapter 38-01 of the North Dakota Century Code, relating to the closing of roads for surface coal mining operations; and to repeal sections 38-01-06 and 38-01-07 of the North Dakota Century Code, relating to condemnation of roads for mining operations and to damages for condemnation of roads for mining operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 38-01 of the North Dakota Century Code are created and enacted as follows:

Road may be closed for surface coal mining operations. A surface coal mining operator may petition the board of county commissioners to temporarily close or relocate a section line road or other road if the road interferes with the operator's conduct of surface coal mining operations. The board of county commissioners, if so petitioned, may, after notice and public hearing, temporarily close or relocate the section line road or other road, providing the road is not required due to readily accessible alternate routes of travel and the closing or relocation does not deprive adjacent landowners access to their property. If a road is closed as provided for in this section, the board of county commissioners may require that after completion of surface coal mining operations the operator restore the road to as good a condition as existed prior to the closing of the road.

Notice required. Within thirty days after the board of county commissioners receives a petition to temporarily close or relocate a section line road or other road, the board shall fix a time and place for hearing, and the petitioner, at least ten days prior to the time fixed for the hearing, shall cause notice to be served personally or by mail on all surface owners of the land through which the road passes. The petitioner shall also cause notice to be published once each week for two successive weeks in a newspaper having a general circulation in the county in which the road is located, with the last publication being at least ten days prior to the time fixed for hearing.

SECTION 2. REPEAL. Sections 38-01-06 and 38-01-07 of the North Dakota Century Code are repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 387

HOUSE BILL NO. 1115  
(Committee on Natural Resources)  
(At the request of the State Industrial Commission)

### INDUSTRIAL COMMISSION OIL AND GAS DIRECTOR

AN ACT to amend and reenact section 38-08-04.2 of the North Dakota Century Code, relating to the industrial commission's appointment of a director of oil and gas; and to repeal section 38-08-04.3 of the North Dakota Century Code, relating to the state geologist's duty to assist the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

~~38-08-04.2. Industrial commission - Personnel - Equipment transfer Director of oil and gas. The industrial commission is authorized to appoint a chief enforcement officer director of oil and gas and to set his the director's salary within the limits of legislative appropriations. The industrial commission may designate the state geologist as the chief enforcement officer director of oil and gas. With the approval of the industrial commission, the state geologist may appoint an assistant to have primary responsibility for rule enforcement. The industrial commission, within the limits of legislative appropriations, may make arrangements with the board of higher education, subject to the approval of the emergency commission, to transfer equipment, personnel, and material between the commission and the state geologist as necessary to carry out this chapter.~~

SECTION 2. REPEAL. Section 38-08-04.3 of the North Dakota Century Code is repealed.

Approved March 12, 1991  
Filed March 12, 1991

## CHAPTER 388

HOUSE BILL NO. 1500  
(Representatives Rennerfeldt, Byerly)  
(Senator Kinnoin)

### DRILLING RISK PENALTY

AN ACT to create and enact a new subsection to section 38-08-08 of the North Dakota Century Code, relating to the imposition of a risk penalty on leasehold owners who elect not to pay in advance their proportionate share of the costs of drilling an oil or gas well.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 38-08-08 of the North Dakota Century Code is created and enacted as follows:

In addition to any costs and charges recoverable under subsection 1 and 2, if a lessee owning an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating lessee's share of the drilling and operation of a well may recover from the nonparticipating lessee a risk penalty for the risk involved in drilling the well. The risk penalty is one hundred percent of the nonparticipating lessee's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. No risk penalty may be assessed against an unleased mineral interest.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 389

HOUSE BILL NO. 1333  
(Representatives A. Olson, Mahoney)  
(Senator Keller)

### UNITIZATION PLAN APPROVAL

AN ACT to amend and reenact sections 38-08-09.5 and 38-08-09.9 of the North Dakota Century Code, relating to ratification or approval of unitization plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-09.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.5. Ratification or approval of plan by lessees and owners. At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall set a time and place for the hearing. At least forty-five days prior to the hearing, the applicant or someone under his direction and control, shall give notice of the time and place of said hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last known post-office address. In addition, such applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at said hearing, and further, the notice must so specify that such material is filed and is available for inspection. Service is complete in the mailing of the notice of hearing and unit agreement to each interest owner as hereinbefore prescribed at his last known address and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing the plan of unitization applicable thereto becomes effective unless and until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least ~~eighty~~ seventy percent of the costs of the unit operation and also by the owners of at least ~~eighty~~ seventy percent of the royalty interests under the commission's order, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it shall be required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, shall be required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area. Where the plan of unitization has not been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional and supplemental hearings as may be requested or required to determine if and when the plan of unitization has been so signed,

ratified, or approved by lessees and royalty owners owning the required percentage interest in and to the unit area and shall, in respect to such hearings, make and enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest in and to the unit area have not so signed, ratified, or approved the plan of unitization within a period of six months from and after the date on which the order creating the unit is made, the order creating the unit ceases to be of further force and effect and shall be revoked by the commission.

SECTION 2. AMENDMENT. Section 38-08-09.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan. The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees, or the amendment to a plan of unitization or the enlargement of a unit area is found by the commission to be reasonably necessary in order to effectively carry on the joint effort, to prevent waste, and to protect correlative rights, and that such will result in the general advantage of the owners of the oil and gas rights within the unit area and the proposed enlarged unit area, and the persons and owners in the proposed added unit area have ratified or approved the plan of unitization as required by section 38-08-09.5, then such amendment to a plan of unitization or the enlargement of a unit area need not be ratified or approved by royalty owners of record in the existing unit area provided that written notice thereof is mailed to such royalty owners by the operator of a unit not more than forty days nor less than thirty days prior to the commission hearing. The notice must describe the plan for the unit amendment or enlargement together with the participation factor to be given each tract in the unit area and in the proposed area and must contain the time and place of the commission hearing. An affidavit of mailing verifying such notice must be filed with the commission. Said notice must further provide that in the event ten percent of the royalty interests or working interests in the existing unit area file with the commission at least ten days prior to the commission proceeding an objection to the plan of enlargement, the commission shall require that the unit amendment or enlargement be approved by ~~eighty~~ seventy percent of all royalty interests and working interests in the existing and proposed areas.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 390

HOUSE BILL NO. 1412  
(Byerly, Schmidt, Rennerfeldt)

### OIL AND GAS WELLHEAD WELDER CERTIFICATION

AN ACT to amend and reenact section 38-08-22 of the North Dakota Century Code, relating to regulation of welders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-08-22. Regulation of welders by oil and gas division of industrial commission - Continuing appropriation. No person may weld on an oil and gas wellhead unless that person is certified. A welder shall submit to the oil and gas division of the industrial commission for verification sufficient data to show satisfactory performance in a qualification test for American society of mechanical engineers section nine position six-G. The test of a welded specimen must be made by a certified testing laboratory. Before welding on an oil and gas wellhead, the welder shall furnish a statement to the person for whom the work is performed showing that the welder's certification has been verified by the commission. A person who violates this section is subject to a civil penalty to be imposed by the commission not to exceed five hundred dollars for each violation and shall pay all legal, administrative, and other costs incurred by the commission in investigating and litigating a violation. The commission may charge ~~an annual~~ a fee of twenty-five dollars for verifying a certification. ~~Annual~~ A certification must be verified every three years. The fees collected under this section must be deposited into the state treasury in a special revolving fund. All moneys in the fund are hereby appropriated to the commission on a continuing basis to be used in administering this section.

Approved March 19, 1991  
Filed March 19, 1991



## CHAPTER 391

HOUSE BILL NO. 1146  
(Committee on Natural Resources)  
(At the request of the State Geological Survey)

### COAL EXPLORATION ACTIVITIES

AN ACT to create and enact a new subdivision to subsection 2 of section 38-12.1-05, relating to requirements for a coal exploration permit; and to amend and reenact subdivision b of subsection 2 of section 38-12.1-03 of the North Dakota Century Code, relating to the definition of "coal exploration".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 2 of section 38-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. Environmental data gathering activities which substantially disturb the natural land surface and which are conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.

SECTION 2. A new subdivision to subsection 2 of section 38-12.1-05 of the North Dakota Century Code is created and enacted as follows:

For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 392

HOUSE BILL NO. 1175  
(Committee on Natural Resources)  
(At the request of the Public Service Commission)

### COAL MINING AND EXPLOSIVES NOTICE

AN ACT to amend and reenact subsection 33 of section 38-14.1-02 and subsection 13 of section 38-14.1-24 of the North Dakota Century Code, relating to the definition of surface coal mining operations and notice of the use of explosives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 33 of section 38-14.1-02 of the North Dakota Century Code is amended and reenacted as follows:

33. "Surface coal mining operations" means:

- a. Activities affecting the surface of lands in connection with a surface coal mine. Such activities include extraction of coal from coal refuse piles, excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal at or near the minesite: except that such activities do not include ~~the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds per centum of the tonnage of minerals removed for purposes of commercial use or sale,~~ coal exploration subject to chapter 38-12.1, or the extraction of coal incidental to reclamation operations under chapter 38-14.2; and
- b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

SECTION 2. AMENDMENT. Subsection 13 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

13. Ensure that explosives are used only in accordance with existing state law and the regulations promulgated by the commission, which must include provisions to:
- a. Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by the publication of the planned blasting schedule in ~~the official newspaper of each county wherein the surface coal mining operation is located and in other daily newspapers~~ a newspaper of general circulation in the locality, by mailing a copy of the proposed blasting schedule to every resident living within one-half mile [804.67 meters] of the proposed blasting site, and by providing daily notice to residents in such areas prior to any blasting.
  - b. Maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts.
  - c. Limit the type of explosives and detonating equipment, the size, the timing, and the frequency of blasts based upon the physical conditions of the site so as to prevent:
    - (1) Injury to persons.
    - (2) Damage to public and private property outside the permit area.
    - (3) Change in the course, channel, or availability of ground or surface water outside the permit area.
  - d. Require that all blasting operations be conducted by trained and competent persons as certified by the commission.
  - e. Provide that upon the request of a resident or owner of a manmade dwelling or structure within one-half mile [804.67 meters] of any portion of the permitted area the permittee shall conduct a preblasting survey of such structures and submit the survey to the commission and a copy to the resident or owner making the request. The area of the survey must be decided by the commission and must include such provisions as the commission may promulgate.

Approved April 3, 1991

Filed April 4, 1991

## CHAPTER 393

SENATE BILL NO. 2180  
(Committee on Appropriations)  
(At the request of the Public Service Commission)

### **ABANDONED MINE RECLAMATION FUND**

AN ACT to create and enact a new subsection to section 38-14.2-04 of the North Dakota Century Code, relating to creation of an abandoned mine reclamation set-aside trust account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 38-14.2-04 of the North Dakota Century Code is created and enacted as follows:

There is created a special fund in the state treasury called the state abandoned mine reclamation fund set-aside trust account. Revenue to the set-aside trust account must be ten percent of the amount granted by the secretary of the interior under Title IV of P.L. 95-87 as provided by P.L. 100-34. This account must be interest bearing and all interest must be credited to the set-aside trust account. No funds from this account may be expended prior to September 30, 1995. After September 30, 1995, the funds may be expended as provided in this subsection. The legislature shall authorize expenditure by appropriation from the account as necessary to defray the administrative expenses of the program. The remaining funds in the account may only be used in accordance with section 38-14.2-07. The liability of the state to fulfill the requirements of this subsection is limited to the amount of funds available in the account established in this subsection. The state has no obligations under this subsection except to the extent of federal funds deposited in the coal mine mitigation account and the interest thereon to operate the program.

Approved April 5, 1991  
Filed April 8, 1991

# MOTOR VEHICLES

## CHAPTER 394

HOUSE BILL NO. 1167

(Committee on Transportation)

(At the request of the Department of Transportation)

### DRIVING RECORDS AND LICENSE PLATES

AN ACT to amend and reenact sections 39-01-02, 39-06-21, 39-06-22, 39-06-32, subsections 1 and 2 of section 39-06-33, and subsection 3 of section 39-08-01 of the North Dakota Century Code, relating to the display of official number plates and window decals on state vehicles, the filing of application records for drivers' licenses and related actions, the maintenance of driving records of licensees and the deletion of record retention requirements, the authority to suspend operator licenses and to provide an effective date for such suspensions, and to have number plates impounded by courts returned to the director; and to require a legislative council study of vehicles used by the board of higher education and institutions under its jurisdiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 39-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty. All motor vehicles owned and operated by the state, except vehicles under the control of the central vehicle management system and the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required height. The color of the lettering must be in clear and sharp contrast to the background. ~~The state highway patrol and all peace officers of this state shall enforce this section. The state auditor, in the course of spot checking or verifying the inventory of any state agency, shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section that comes to the auditor's attention. The above requirements do not apply to vehicles operated by the attorney general's office, the bureau of criminal investigation, or the highway patrol, vehicles used for drivers education at state institutions, vehicles used principally in juvenile, parole, and placement service, selected cars or vehicles of the state penitentiary approved by the director of institutions, vehicles owned and operated by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, or to any truck owned by any state agency. A passenger~~

\* NOTE: Section 39-01-02 was also amended by section 18 of Senate Bill No. 2001, chapter 28, and by section 12 of Senate Bill No. 2245, chapter 592.

motor vehicle bearing official plates must be in compliance with this section. The administrator of any state agency who uses or authorizes the use of a motor vehicle which is not marked as required by this section is guilty of a class B misdemeanor. The central vehicle management system vehicles must display a window decal designed by the director. The state highway patrol and all peace officers of this state shall enforce this section.

SECTION 2. AMENDMENT. Section 39-06-21 of the North Dakota Century Code is amended and reenacted as follows:

39-06-21. Filing application records. The commissioner director shall file every application for a license and shall maintain individual records of convictions and adjudications of traffic offenses, suspensions, revocations, cancellations, restrictions, and traffic accidents in which they have been involved. The commissioner may destroy such records provided the required information has been microfilmed each application for a license received and shall maintain suitable indexes containing:

1. All applications denied and on each such application note the reason for the denial;
2. All applications granted; and
3. The name of every licensee whose license has been suspended, revoked, canceled, or restricted by the department and after each such name state the reasons for such actions.

SECTION 3. AMENDMENT. Section 39-06-22 of the North Dakota Century Code is amended and reenacted as follows:

39-06-22. Driving records of licensees. The commissioner director shall also file all accident reports and, abstracts of court records of convictions received by him the director under the laws of this state and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the commissioner director upon any application for renewal of license and at other suitable times. Such accident reports may be destroyed after six years and abstracts of court records may be destroyed after four years; provided the required information has been transferred to microfilm.

\* SECTION 4. AMENDMENT. Section 39-06-32 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-32. Authority to suspend licenses. The commissioner director may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.

\* NOTE: Section 39-06-32 was also amended by section 1 of House Bill No. 1446, chapter 412.

4. Refusal to submit to an implied consent chemical alcohol test in another state. For purposes of this subsection the specific requirements for establishing a refusal used in the other state may not be considered, and photostatic copies of the records of the other state's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-20-04.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, in violation of section 39-06.1-04, or willful violation of a written promise to appear in court, in violation of section 39-07-08.
7. An administrative decision in another state that the licensee's privilege to drive in that state is suspended or revoked because of a violation of that state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight. The specific requirements for establishing the violation in the other state may not be considered and certified copies of the records of the other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1.
8. Conviction of an offense under this title and it appears from the ~~commissioner's~~ director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

An order of suspension issued under this section is effective twenty days after the date of mailing of the notice of opportunity for hearing.

SECTION 5. AMENDMENT. Subsections 1 and 2 of section 39-06-33 of the North Dakota Century Code are amended and reenacted as follows:

1. In matters of driver's license suspension or revocation arising under ~~chapter 39-06, section sections 39-06-32 and 39-06.1-10, and chapter chapters 39-16 and 39-16.1~~, the ~~commissioner~~ director shall ~~first~~ give notice of intention to suspend to the licensee by mailing the notice to the licensee at the address of record in the department under section 39-06-20. Actual notice of the opportunity for a hearing under this section must be deemed to have occurred ~~forty eight~~ ~~seventy-two~~ hours after the notice is mailed by regular mail. The licensee has ten days after the date of mailing of the notice to request, in writing, a hearing on the intended suspension or revocation.

2. Any hearing conducted under this section and any appeal from the decision of the hearing must be conducted under ~~chapter 20-32~~ rules adopted by the director, except the hearing must be heard within sixty days of the receipt of the request for hearing and in the county of the licensee's residence, unless the parties agree to a different time and place for the hearing. At the hearing, the regularly kept records of the ~~commissioner~~ director may be introduced and are prima facie evidence of their content without further foundation.

SECTION 6. AMENDMENT. Subsection 3 of section 39-08-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by ~~the sheriff or the chief law enforcement officer of the city, as is appropriate,~~ for the duration of the period of suspension or revocation of the offender's ~~driver's license or driving privilege~~ by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the director must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.

SECTION 7. LEGISLATIVE COUNCIL STUDY OF VEHICLES USED BY THE BOARD OF HIGHER EDUCATION AND INSTITUTIONS UNDER ITS JURISDICTION. The legislative council shall study the feasibility and desirability of requiring vehicles used by the board of higher education and institutions under its jurisdiction to be under the control of the central vehicle management system. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-third legislative assembly.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 395

HOUSE BILL NO. 1433  
(Representatives Oban, Price, Kolbo)  
(Senators Schoenwald, Tennefos)

### MOBILITY-IMPAIRED PARKING CERTIFICATES

AN ACT to amend and reenact subsections 4, 5, 9, and 10 of section 39-01-15 of the North Dakota Century Code, relating to parking privileges for mobility-impaired persons; to provide for a study on the issuance of mobility-impaired certificates; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 4, 5, 9, and 10 of section 39-01-15 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The director may issue, for a fee of three dollars per year or part of a year, a special identifying certificate to any mobility-impaired applicant upon submission by the applicant of a completed application and a written statement issued by a qualified physician to the director that the applicant is a mobility-impaired person within the criteria of subsection 2. The application must include the information required by the director. The physician's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate is valid for a period, not to exceed three years, as determined by the director. A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be at least five and one-half inches [13.97 centimeters] in height and eight and one-half inches [21.59 centimeters] in width and must bear, in blue on white, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the director. The director shall adopt rules governing the issuance of the certificate. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the director for a fee of three dollars upon application supported by a physician's statement. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's statement that the extension is warranted. The director shall determine the form and size of the temporary certificate. The director may issue a maximum of two additional certificates, for a fee of six dollars per certificate, to a mobility-impaired person to whom a certificate has been issued

\* NOTE: Subsections 9 and 10 of section 39-01-15 were also amended by section 1 of House Bill No. 1184, chapter 396.

under this subsection. The additional certificates may only be used by or on behalf of the mobility-impaired person.

5. ~~Two~~ Except as provided in this subsection, two dollars of each fee for issuance of a certificate and one dollar of each fee for issuance of an additional certificate under this section must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate. The rest of the fee, and the five-dollar fee received for the issuance of an additional certificate under subsection 4, must be deposited in the state treasury and credited to the employment of people with disabilities fund. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of people with disabilities of the governor's council on human resources for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement. The person shall furnish proof satisfactory to the director that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
  
9. Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces ~~shall~~ must comply with the requirements of American National Standards A117.1-1986 and must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the spaces reserved must also be indicated by official signs approved by the director bearing the internationally accepted symbol of access for the mobility impaired which indicate, through the use of arrows, the total width of the reserved area. The sign must indicate that unauthorized use of the space is an infraction for which a fine of one hundred dollars must be imposed. For particular events, a public or a private agency may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer ~~may~~ shall enforce this section in any parking lot or parking facility, whether publicly or privately owned.
  
10. A person may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired person. A mobility-impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired person. A vehicle may temporarily use a space reserved for mobility-impaired persons without a mobility-impaired certificate for the purpose of loading and unloading mobility-impaired persons. A violation of this subsection is ~~an~~

infraction a nonmoving violation for which a fine fee of one hundred dollars must be imposed. Notwithstanding section 29-27-02.1, fifty percent of the fee imposed and collected under this subsection is appropriated on a continuing basis to the local committee on persons with disabilities, if one exists in the city in which the violation occurred, for the development of job opportunities for disabled individuals in the community.

SECTION 2. STUDY OF ISSUANCE OF MOBILITY-IMPAIRED CERTIFICATES. The department of transportation and the committee on employment of people with disabilities of the governor's council on human resources shall conduct a study to determine the feasibility and desirability of providing for the issuance of identifying certificates to mobility-impaired persons for parking privilege purposes by the committee rather than by the department. The department and the committee shall report their findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-third legislative assembly.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 396

HOUSE BILL NO. 1184  
(Representatives Rydell, Oban)  
(Senator Stenehjem)

**MOBILITY-IMPAIRED PARKING**

AN ACT to amend and reenact subsections 9 and 10 of section 39-01-15 of the North Dakota Century Code, relating to parking privileges for the mobility impaired; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 9 and 10 of section 39-01-15 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

9. Whenever any public or private ~~agency or authority~~ entity designates parking spaces for use by motor vehicles operated by mobility-impaired persons, those reserved spaces ~~shall~~ must be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, ~~the spaces~~ each reserved space must ~~also~~ be indicated by ~~an official~~ signs sign approved by the director bearing the internationally accepted symbol of access for the mobility impaired ~~which indicate, through the use of arrows, the total width of the reserved area.~~ The sign must indicate that unauthorized use of the space is ~~an infraction~~ a nonmoving violation for which a fine fee of one hundred dollars must be imposed. For particular events, a public or a private ~~agency~~ entity may reserve additional parking spaces for use by motor vehicles operated by mobility-impaired persons. In that case, ~~the each~~ temporarily reserved spaces space must be indicated by ~~signs~~ a sign or other suitable means. A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility-impaired parking space, is sufficient basis for the enforcement of this section. A law enforcement officer may enforce this section in any parking lot or parking facility, whether publicly or privately owned.
10. A person may not stop, stand, or park any vehicle in any designated parking space that is reserved for the mobility impaired unless the vehicle displays a mobility-impaired identification certificate issued by the director to a mobility-impaired person. A mobility-impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility-impaired person. The registered owner of a vehicle may not allow that vehicle to be used in a manner that violates this subsection. Proof of intent is not required to prove a registered

\* NOTE: Subsections 9 and 10 of section 39-01-15 were also amended by section 1 of House Bill No. 1433, chapter 395.

owner's violation of this subsection. The registered owner, however, may be excused from a violation if the owner provides the citing authority with the name and address of the person operating the vehicle at the time of the violation. A vehicle may temporarily use a space reserved for mobility-impaired persons without a mobility-impaired certificate for the purpose of loading and unloading mobility-impaired persons. A violation of this subsection is an infraction a nonmoving violation for which a fine fee of one hundred dollars must be imposed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 397

HOUSE BILL NO. 1132  
(Committee on Transportation)  
(At the request of the Department of Transportation)

### **DRIVERS' RECORDS FEES**

AN ACT to amend and reenact section 39-02-05 of the North Dakota Century Code, relating to the fee for furnishing copies of records of the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-02-05 of the North Dakota Century Code is amended and reenacted as follows:

39-02-05. Records of the department open to public inspection. All registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The ~~registrar of motor vehicles~~ director shall charge a uniform fee, not to exceed ~~one dollar~~ three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which he is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the motor vehicle registration fund.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 398

HOUSE BILL NO. 1224  
(Gerntholz)**HIGHWAY PATROLMAN AGE REQUIREMENTS**

AN ACT to amend and reenact section 39-03-04 of the North Dakota Century Code, relating to qualifications of appointees to the highway patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03-04 of the North Dakota Century Code is amended and reenacted as follows:

39-03-04. Qualifications of patrolmen - Veterans have preference. No person may be appointed as a patrolman unless ~~he~~ the person has all of the following qualifications:

1. ~~Is not less than eighteen and not more than thirty three years of age on the date of his appointment.~~
2. Has passed such physical examination and such other qualification test as may be required by the superintendent.
3. 2. Is of good moral character and temperate habits.
4. 3. Has been a citizen of the United States for not less than two years prior to ~~his~~ the appointment.

Preference for appointment must be given at all times to honorably discharged veterans and citizens of the state of North Dakota, and all appointments must be made without regard to any political party affiliation of the applicant. ~~From July 1, 1983, through June 30, 1984, the superintendent may waive the age requirements for the personnel of the truck regulatory division of the state highway department that are so employed as of June 30, 1983.~~

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 399

HOUSE BILL NO. 1121  
(Committee on Transportation)  
(At the request of the Highway Patrol)

### HIGHWAY PATROL SECURITY POWERS

AN ACT to create and enact two new subsections to section 39-03-09 of the North Dakota Century Code, relating to the powers and duties of the state highway patrol; and to amend and reenact subsection 11 of section 39-03-09 of the North Dakota Century Code, relating to the powers and duties of the state highway patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 39-03-09 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~Of a peace officer for the purpose of enforcing the provisions of this code at all state charitable and penal institutions and on the state capitol grounds. To exercise general police powers over all violations of law committed on state property.~~

SECTION 2. Two new subsections to section 39-03-09 of the North Dakota Century Code are created and enacted as follows:

To provide security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor to the extent and in a manner the governor and the superintendent deem adequate and appropriate.

To provide security and protection for both houses of the legislative assembly while in session as in the opinion of the speaker of the house, the president of the senate, and the superintendent are deemed adequate and appropriate.

Approved March 8, 1991  
Filed March 8, 1991



## CHAPTER 400

HOUSE BILL NO. 1187  
(Committee on State and Federal Government)  
(At the request of the Public Employees Retirement System)

### HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to create and enact two new sections to chapter 39-03.1 of the North Dakota Century Code, relating to federal limitations on retirement benefits under the highway patrolmen's retirement system; to amend and reenact section 39-03.1-11 of the North Dakota Century Code, relating to retirement benefits under the highway patrolmen's retirement system; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-03.1-11. Retirement benefit. Each contributor whose employment with the patrol has been terminated may apply to the board for retirement benefits according to this section and rules adopted by the board consistent with this chapter. The following procedures apply:

1. A contributor is entitled to credit for permanent employment or its equivalent from the date eligibility is attained until normal or postponed retirement date, as described in subsection 3.
2. Retirement benefits are based on the contributor's final average salary. Final average salary is the average of the highest salary received by the contributor for any thirty-six consecutive months employed during the last one hundred twenty months of employment. Months not employed or months in which employment was not as a permanent employee are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the contributor has worked for less than thirty-six months at the postponed retirement date, the final average salary is the average salary for all months of employment.
3. Retirement dates are as follows:
  - a. Early retirement date is the first day of the month next following the month in which the contributor attains the age of fifty years and has completed at least ten years of eligible employment.
  - b. Normal retirement date is ~~the~~ (1) The first day of the month next following the month in which the contributor attains the age of fifty-five years

and has completed at least ten years of eligible employment; or

(2) When the contributor has a combined total of years of service credit and years of age equal to eighty and has not received a retirement benefit under this chapter.

- c. Postponed retirement date is the first day of the month next following the month in which the contributor attains the age of sixty years.
  - d. Disability retirement date is the first day of the month after a contributor becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of employment.
4. The board shall calculate retirement benefits as follows:
- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
    - (1) The first twenty-five years of credited service multiplied by two and ~~three-fourths~~ eighty-three hundredths percent of final average salary.
    - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.
    - (3) All contributors who retired before July 1, ~~1989~~ 1991, are entitled to receive benefits equal to two and ~~three-fourths~~ eighty-three hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning July 1, 1991.
  - b. Early retirement benefits are normal retirement benefits accrued to the date of termination of employment, but actuarially reduced to account for benefit payments beginning before the normal retirement date.
  - c. Postponed retirement benefits, for all contributors reaching the postponed retirement date, are calculated in the same manner as normal retirement benefits.
  - d. Disability retirement benefits are seventy percent of the contributor's final average salary, reduced by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.
5. On termination of employment after completing ten years of eligible employment but before the normal retirement date, a contributor who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits. The deferred benefits

are payable beginning on the contributor's normal retirement date and are one hundred percent of the contributor's normal retirement benefits. The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increased provided state employees pursuant to action by the legislative assembly.

6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to any beneficiary designated by the contributor with the written consent of the contributor's spouse, if any. If the contributor has not designated any beneficiary under this section, the surviving spouse of the contributor may select one of the following optional forms of payment:
  - a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
  - b. Payments for sixty months as calculated for the deceased contributor as if the contributor was age fifty-five at the date of death.
  - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.
7. If a contributor not eligible for the benefits of subsection 6 terminates employment for any reason before retirement, the contributor or the contributor's designated beneficiary is entitled to the contributor's accumulated deductions at termination.
8. If a contributor who is receiving retirement benefits, or a contributor's surviving spouse who is receiving retirement benefits, dies before the total amount of benefits paid to them equals the amount of the contributor's accumulated deductions at retirement, the difference must be paid to that spouse's estate, to the surviving beneficiary, or to the contributor's estate.
9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
  - a. ~~Joint~~ A joint and survivor, with fifty percent or one hundred percent options option.
  - b. Life with five-year or ten-year certain options.

Unless a contributor requests that the contributor receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension, with a fifty percent option to the surviving spouse.

SECTION 2. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Benefit limitations. Benefits with respect to a patrol member who first became a member of the highway patrolmen's retirement system on or after January 1, 1990, may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] for governmental plans. This section constitutes an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] with respect to a patrol member who first became a contributor before January 1, 1990.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Savings clause - Plan modifications. If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the committee on public employees retirement programs. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 4. APPLICATION OF ACT. The change in the definition of final average salary provided in section 1 of this Act applies to retirement benefits payable after June 30, 1991, but does not apply to contributors who retired before July 1, 1991.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 401

SENATE BILL NO. 2183  
(Committee on Transportation)  
(At the request of the Department of Transportation)

### IFTA VIOLATIONS EFFECT ON REGISTRATION

AN ACT to create and enact a new subsection to section 39-04-05 and a new subsection to section 39-04-06 of the North Dakota Century Code, relating to refusing, rescinding, or suspending vehicle registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-04-05 of the North Dakota Century Code is created and enacted as follows:

When the vehicle is operating in violation of the provisions of the international registration plan or the international fuel tax agreement.

SECTION 2. A new subsection to section 39-04-06 of the North Dakota Century Code is created and enacted as follows:

When the department determines a vehicle is operating in violation of the provisions of the international fuel tax agreement.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 402

HOUSE BILL NO. 1239  
(Gorman)

### COLLECTOR VEHICLE PERSONALIZED PLATES

AN ACT to amend and reenact section 39-04-10.3 of the North Dakota Century Code, relating to personalized plates for a collector's motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-10.3. Personalized plates. The department may, in its discretion, provide special plates marked with initials, letters, or combinations of numerals and letters at the request of the registrant, upon application therefor and upon payment of an additional fee of twenty-five dollars per registration period. The department shall make the special plates authorized by this section available for motor vehicles registered under section 39-04-10.6 and motorcycles. The fee for the special plates issued under this section for vehicles registered under section 39-04-10.6 is a one-time fee of one hundred dollars. The special plates must contain not more than six letters or a combination of not more than six numerals and letters. In the event of sale or transfer of the vehicle, the special plates may remain with the vehicle or they may be surrendered and, upon application, a regular license plate must be issued without additional cost, or upon payment of the applicable registration fee, the special plates must be transferred to the replacement motor vehicle.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 403

HOUSE BILL NO. 1390  
(Representatives Martinson, Gerntholz, Belter)  
(Senator Dotzenrod)

### NATIONAL GUARD MOTOR VEHICLE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to issuance of distinctive motor vehicle number plates to national guard members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

National guard number plates. The director, in cooperation with the adjutant general, shall issue distinctive number plates to members of the national guard. A plate issued under this section must bear the national guard insignia designated by the adjutant general and the letters "NG" before the number. The director may issue the plates to the owner of a passenger motor vehicle or a truck the gross weight of which does not exceed ten thousand pounds [4535.92 kilograms]. On request of the director, the adjutant general shall certify those members of the national guard eligible to receive the plates. On payment of all other fees required under this chapter for registration of the motor vehicle, and payment of an additional fee of not more than five dollars to cover the cost of issuing the distinctive number plates, the applicant is entitled to issuance of the distinctive number plates. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the national guard or if the registrant has retired from the national guard after twenty years or more of military service. On termination of the registrant's eligibility, the registrant shall return the distinctive number plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The registrar and adjutant general shall cooperate in establishing procedures to implement this section.

Approved March 13, 1991  
Filed March 13, 1991

# CHAPTER 404

HOUSE BILL NO. 1575  
(Representatives Nicholas, R. Anderson, Nowatzki)  
(Senators Tallackson, O'Connell, Vosper)

## ETHANOL PRODUCTION INCENTIVES

AN ACT to amend and reenact sections 39-04-19, 57-43.1-02, 57-43.1-03.1, and 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle registration fees, tax reductions for fuels that contain a qualifying blend of alcohol, and reductions of refunds of motor vehicle fuels taxes on fuel used for agricultural purposes; to provide an appropriation; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-19. Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
  - a. Passenger motor vehicles:

Gross Weights	YEARS REGISTERED			
	1st, 2nd, 3rd, 4th, and 5th Years	6th, 7th, and 8th Years	9th, 10th, and 11th Years	12th and Subsequent Years
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th, 11th, and 12th Years	13th and Subsequent Years
Less than 3,200	\$ 49.00	\$ 41.00	\$ 33.00	\$ 25.00
3,200-4,499	69.00	57.00	45.00	33.00
4,500-4,999	87.00	70.00	55.00	39.00
5,000-5,999	118.00	96.00	74.00	52.00
6,000-6,999	151.00	122.00	93.00	65.00
7,000-7,999	184.00	148.00	113.00	78.00



8,000-8,999	217.00	175.00	133.00	91.00
9,000 and over	250.00	201.00	153.00	104.00

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
not over 4,000	\$47.00	\$34.00	\$29.00	\$26.00
4,001- 6,000	52.00	39.00	33.00	27.00
6,001- 8,000	57.00	44.00	37.00	28.00
8,001-10,000	62.00	49.00	41.00	30.00
10,001-12,000	67.00	54.00	45.00	32.00
12,001-14,000	72.00	59.00	49.00	35.00
14,001-16,000	77.00	64.00	53.00	38.00
16,001-18,000	82.00	69.00	57.00	40.00
18,001-20,000	85.00	72.00	59.00	41.00

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, 9th, 10th, and 11th Years	12th and Subsequent Years
	1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years	8th, 9th, 10th, 11th, and 12th Years	Subsequent Years
20,001- 22,000	\$ 115.00	\$ 89.00	\$ 76.00
22,001- 26,000	167.00	137.00	121.00
26,001- 30,000	228.00	186.00	164.00
30,001- 34,000	294.00	239.00	211.00
34,001- 38,000	355.00	288.00	254.00
38,001- 42,000	416.00	337.00	296.00
42,001- 46,000	477.00	385.00	339.00
46,001- 50,000	538.00	434.00	382.00
50,001- 54,000	608.00	492.00	433.00
54,001- 58,000	669.00	541.00	476.00
58,001- 62,000	730.00	590.00	519.00
62,001- 66,000	791.00	638.00	562.00
66,001- 70,000	852.00	687.00	604.00
70,001- 74,000	913.00	736.00	647.00
74,001- 78,000	974.00	785.00	690.00
78,001- 82,000	1,035.00	834.00	733.00

82,001- 86,000	1,158.00	939.00	820.00
86,001- 90,000	1,280.00	1,043.00	907.00
90,001- 94,000	1,402.00	1,148.00	994.00
94,001- 98,000	1,524.00	1,253.00	1,082.00
98,001-102,000	1,646.00	1,357.00	1,169.00
102,001-105,500	1,768.00	1,462.00	1,256.00

c. Motorcycles, fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 1901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years
	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
20,001- 22,000	\$ 88.00	\$ 74.00	\$ 60.00	\$ 42.00
22,001- 24,000	93.00	78.00	63.00	44.00
24,001- 26,000	101.00	84.00	67.00	46.00
26,001- 28,000	111.00	92.00	73.00	50.00
28,001- 30,000	121.00	100.00	79.00	54.00

30,001- 32,000	136.00	113.00	90.00	63.00
32,001- 34,000	146.00	121.00	96.00	67.00
34,001- 36,000	156.00	129.00	102.00	71.00
36,001- 38,000	166.00	137.00	108.00	75.00
38,001- 40,000	176.00	145.00	114.00	79.00
40,001- 42,000	186.00	153.00	120.00	83.00
42,001- 44,000	196.00	161.00	126.00	87.00
44,001- 46,000	206.00	169.00	132.00	91.00
46,001- 48,000	216.00	177.00	138.00	95.00
48,001- 50,000	226.00	185.00	144.00	99.00
50,001- 52,000	246.00	203.00	160.00	113.00
52,001- 54,000	256.00	211.00	166.00	117.00
54,001- 56,000	266.00	219.00	172.00	121.00
56,001- 58,000	276.00	227.00	178.00	125.00
58,001- 60,000	286.00	235.00	184.00	129.00
60,001- 62,000	296.00	243.00	190.00	133.00
62,001- 64,000	306.00	251.00	196.00	137.00
64,001- 66,000	316.00	259.00	202.00	141.00
66,001- 68,000	326.00	267.00	208.00	145.00
68,001- 70,000	336.00	275.00	214.00	149.00
70,001- 72,000	346.00	283.00	220.00	153.00
72,001- 74,000	356.00	291.00	226.00	157.00
74,001- 76,000	366.00	299.00	232.00	161.00
76,001- 78,000	376.00	307.00	238.00	165.00
78,001- 80,000	386.00	315.00	244.00	169.00
80,001- 82,000	396.00	323.00	250.00	173.00
82,001- 84,000	406.00	345.00	293.00	249.00
84,001- 86,000	426.00	362.00	307.00	261.00
86,001- 88,000	446.00	379.00	321.00	273.00
88,001- 90,000	466.00	396.00	335.00	285.00
90,001- 92,000	486.00	413.00	349.00	297.00
92,001- 94,000	506.00	430.00	363.00	309.00
94,001- 96,000	526.00	447.00	377.00	321.00
96,001- 98,000	546.00	464.00	391.00	333.00
98,001-100,000	566.00	481.00	405.00	345.00
100,001-102,000	586.00	498.00	419.00	357.00
102,001-104,000	606.00	515.00	433.00	369.00
104,001-105,500	626.00	532.00	447.00	381.00

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

SECTION 2. AMENDMENT. Section 57-43.1-02 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. Tax imposed on motor vehicle fuels —Tax reduced for certain alcohol blended fuels.

1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The tax imposed on gasoline sold which contains a minimum ten percent blend of a qualifying alcohol whose purity is at least ninety-nine percent alcohol is reduced in accordance with this~~

subsection and subsection 3-. An alcohol is a qualifying alcohol if it is methanol produced from coal or if the taxpayer certifies that it is derived from agricultural products produced entirely in the United States. For qualifying alcohols, the tax is:

- a. From July 1, 1985, through June 30, 1987, eight cents per gallon [3.79 liters] less than the tax imposed under subsection 1-
- b. From July 1, 1987, through December 31, 1992, four cents per gallon [3.79 liters] less than the tax imposed under subsection 1-
- c. After December 31, 1992, at the same rate as the tax imposed under subsection 1-

3- The tax reduction allowed on gasoline under this section does not apply to gasoline which contains qualifying alcohol manufactured or distilled outside this state, unless the state where the alcohol is manufactured or distilled provides a specific reduction, exemption, credit, or refund from that state's motor vehicle fuels tax for what would be a qualifying alcohol manufactured or distilled in this state. Qualifying alcohols manufactured or distilled in another state are eligible for the tax reduction allowed by this section, but only to the extent that state's specific reduction, exemption, credit, or refund allowance applies to qualifying alcohol manufactured or distilled in this state. The tax reduction allowed by this subsection qualifying alcohol manufactured or distilled in another state cannot exceed the amount specified in subsection 2-

4- The dealer shall collect the tax imposed by this section from the consumer on all sales.

5- 3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

SECTION 3. AMENDMENT. Section 57-43.1-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by ~~two~~ four cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, ~~and the~~ two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, and two cents per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund. Those persons who have a valid tax assignment permit issued by the commissioner under section

57-43.1-11 must be charged ~~two~~ four cents per gallon [3.79 liters] by the dealer and the ~~two~~ four cents charged must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. Tax imposed - Exemptions.

1. An excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. The tax on agriculturally derived alcohol if used in a pure state or if blended with another agriculturally derived liquid is:
  - a. Through December 31, 1983, four cents per gallon [3.79 liters] less than the tax imposed under subsection 1.
  - b. From January 1, 1984, through December 31, 1984, five cents per gallon [3.79 liters] less than the tax imposed under subsection 1.
  - c. From January 1, 1985, through December 31, 1985, six cents per gallon [3.79 liters] less than the tax imposed under subsection 1.
  - d. From January 1, 1986, through June 30, 1992, four cents per gallon [3.79 liters] less than the tax imposed under subsection 1.
  - e. After June 30, 1992, at the same rate as the tax imposed under subsection 1.
3. The tax attaches at the time of sale, delivery, or transfer of title of such special fuel to a special fuel user or unlicensed dealer. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this chapter.
4. ~~3.~~ Except as prohibited by section 57-43.1-09 the tax is refundable when used for nonhighway purposes, and the provisions and procedures of chapter 57-43.1 relating to the refund of motor fuel taxes apply to the tax imposed by this chapter, provided that the amount refunded for any special fuel does not include the amount of tax imposed by section 57-43.2-03 on the sale of that fuel.

**SECTION 5. APPROPRIATION - TRANSFER - AUDIT REPORTS.** The amount of \$3,650,000, or so much thereof as may be necessary, is hereby appropriated from the highway tax distribution fund to the agricultural products utilization commission for the purpose of providing production incentives to North Dakota ethanol plants during the biennium beginning July 1, 1991, and ending June 30, 1993. It is the intent of the legislative assembly that, of the amount appropriated in this section, \$2,400,000 is added revenue from the amendment in section 1 of this Act and \$1,250,000 is added revenue from the amendment in section 3 of this Act, and that this added revenue is to be used to provide production incentives to North Dakota ethanol plants through June 30, 1993. Distribution from the appropriation in this section to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. For purposes of this section "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producers credit is being sought is to be sold at retail to consumers in North Dakota. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. If two or more ethanol production plants are in operation in this state throughout the 1991-93 biennium, a single plant may not receive incentive payments of more than nine hundred fifty thousand dollars for production in either fiscal year of the 1991-93 biennium. However, during any time one of the plants eligible for production incentives is not in operation for thirty or more consecutive days, any other ethanol production plant that is in operation may receive up to one hundred fifty thousand dollars per thirty calendar days in incentive payments for production during such time and the annual incentive payment limitation is waived to the extent of payments received under the authority of this sentence. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1990, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether or not the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program.

**SECTION 6. EFFECTIVE DATE - EXPIRATION DATE.** Section 1 of this Act is effective from July 1, 1991, through June 30, 1995, and is thereafter ineffective. Section 3 of this Act is effective for motor vehicle fuel taxes paid from January 1, 1991, through December 31, 1994, and is thereafter ineffective.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 405

SENATE BILL NO. 2096  
(Committee on Transportation)  
(At the request of the Department of Transportation)

### ABANDONED VEHICLE NUMBER PLATES

AN ACT to amend and reenact subsection 1 of section 39-04-36, section 39-26-05, and subsection 1 of section 39-26-08 of the North Dakota Century Code, relating to the removal of license plates prior to purchase of an abandoned vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-04-36 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the owner of a vehicle registered under the provisions of this chapter transfers or assigns his title thereto or interest therein, the registration of the vehicle, together with the number plates originally assigned thereto, must be transferred to the transferee as provided in this chapter. The number plates originally assigned to the vehicle must remain attached thereto until the end of the current registration year except as provided in this chapter or as provided by sections 2 and 3 of this Act.

SECTION 2. AMENDMENT. Section 39-26-05 of the North Dakota Century Code is amended and reenacted as follows:

39-26-05. Conditions under which an abandoned vehicle may be sold immediately. When an abandoned motor vehicle is more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in North Dakota or any other state or foreign country, it is immediately eligible for disposition and must be disposed of to a scrap iron processor licensed under section 39-26-10, and is not subject to the notification, reclamation, or title provisions of this chapter. Any license plate displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

SECTION 3. AMENDMENT. Subsection 1 of section 39-26-08 of the North Dakota Century Code is amended and reenacted as follows:

1. An abandoned motor vehicle not more than seven model years of age taken into custody and not reclaimed under section 39-26-07 must be sold to the highest bidder at public auction or sale, following reasonable published notice thereof. The purchaser must be given a receipt in a form prescribed by the department which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

## CHAPTER 406

HOUSE BILL NO. 1066  
(G. Berg)

### VEHICLE REGISTRATION CARD PRESENTATION

AN ACT to amend and reenact section 39-04-55 of the North Dakota Century Code, relating to the possession and presentation of vehicle registration cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-55 of the North Dakota Century Code is amended and reenacted as follows:

39-04-55. Registration card to be carried in or on vehicle - Inspection of card - Penalty. The registration card issued for a vehicle must be carried in the driver's compartment of the vehicle or, in the case of a house trailer or mobile home or a trailer or semitrailer, regardless of when such vehicle was acquired, inside or on ~~such the~~ vehicle, at all times while the vehicle is being operated upon a highway in this state. ~~Such~~ The card is subject to inspection by any peace officer or highway ~~patrolman~~ patrol officer. Any person violating ~~any of the provisions of~~ this section must be assessed a fee of twenty dollars, ~~provided that~~. However, a person cited for violation of this section may not be found to have committed ~~a~~ the violation if ~~he shall~~ the person, within forty-eight hours after being cited, ~~produce~~ produces and ~~display~~ displays to ~~a~~ any peace officer or highway ~~patrolman~~ patrol officer, or to the hearing official before whom the person was to appear, a registration card valid at the time the person was cited. A ~~peace officer or highway patrol officer~~, upon citing a person for violating this section, shall inform the person that a violation will be considered as not having occurred if the person produces and displays a valid registration card in the manner provided in this section. A peace officer or highway ~~patrolman~~ patrol officer receiving evidence of the existence of a valid registration card as herein provided shall notify the hearing official of the appropriate jurisdiction of that fact.

Approved March 8, 1991  
Filed March 8, 1991



**CHAPTER 407**

SENATE BILL NO. 2184  
(Committee on Transportation)  
(At the request of the Department of Transportation)

**MOTOR VEHICLE TITLE SIGNATURE**

AN ACT to amend and reenact subsection 1 of section 39-05-09 of the North Dakota Century Code, relating to contents of certificate of title to a motor vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-05-09 of the North Dakota Century Code is amended and reenacted as follows:

1. After checking the application for a certificate as provided in section 39-05-08, the department, if it is satisfied that the applicant is the person entitled to the possession of the vehicle, shall issue a certificate of title which must contain:
  - a. The name of the owner.
  - b. The vehicle identification number.
  - c. The signature of the ~~registrar and the seal of the office~~ director.
  - d. The date issued.
  - e. A description of the vehicle as determined by the department.
  - f. A statement of the owner's title and of all liens or encumbrances upon the vehicle therein described and whether possession is held by the owner or lienholder.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 408

HOUSE BILL NO. 1070  
(Representative Dorso)  
(Senators Lindgren, Tennesfos)

### MOTOR VEHICLE DAMAGE DISCLOSURE

AN ACT to create and enact a new section to chapter 39-05 of the North Dakota Century Code, relating to the adoption of rules by the department of transportation with respect to body damage disclosures on motor vehicle certificates of title; to amend and reenact section 39-05-20.2 of the North Dakota Century Code, relating to the issuance of salvage certificates of title; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-05 of the North Dakota Century Code is created and enacted as follows:

Body damage disclosure - Rules - Penalty. Before January 1, 1992, the department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department must refuse to transfer the title without the required damage disclosure statement. A person who violates rules adopted pursuant to this section is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 39-05-20.2 of the North Dakota Century Code is amended and reenacted as follows:

39-05-20.2. Issuance of salvage certificate of title. Any person or organization who completely destroys or completely dismantles a vehicle so as to cause that vehicle to lose its identity shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application must be accompanied by a certificate of inspection in the form and with the contents specified required by the department, surrender of the salvage certificate of title, and the payment of a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle, a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 409

HOUSE BILL NO. 1459  
(Dorso)

### **SALVAGE AND JUNK VEHICLE TITLE**

AN ACT to create and enact a new section to chapter 39-05 of the North Dakota Century Code, relating to the adoption of rules governing the issuance of certificates of title for salvage and junk motor vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-05 of the North Dakota Century Code is created and enacted as follows:

Titles for salvage and junk motor vehicles - Rules - Penalty. The department may adopt rules defining salvage and junk motor vehicles and governing the manner and circumstances under which certificates of title for such a motor vehicle may be required. The rules must describe the facts and circumstances under which a person must receive from the department a salvage certificate of title or a junk certificate of title for a motor vehicle. A person who violates a rule adopted pursuant to this section is guilty of a class A misdemeanor.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 410

HOUSE BILL NO. 1149  
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

### **STUDENT DRIVER'S TRAINING AGE REQUIREMENT**

AN ACT to amend and reenact subsection 2 of section 39-06-05 of the North Dakota Century Code, relating to the age of students enrolled in behind-the-wheel driver's training through high school programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Any student who is at least fourteen years of age and enrolled in behind-the-wheel driver's training through a high school program approved by the superintendent of public instruction may operate a motor vehicle, under the supervision of a driver training instructor certified by the superintendent of public instruction, without a permit or license to operate a motor vehicle; provided, that the school district sponsoring the driver's training program has an insurance policy covering any damage which may be done by any such student while operating the vehicle, and provided further that proof of coverage is filed with the superintendent of public instruction by the school district's insurance carrier. The insurance coverage must be in the amount required under section 39-16.1-02.

Approved March 8, 1991  
Filed March 8, 1991

**CHAPTER 411**

SENATE BILL NO. 2388  
(Marks, O'Connell)

**MOTOR VEHICLE OPERATOR'S LICENSE RESTRICTION**

AN ACT to amend and reenact subsection 1 of section 39-06-17 of the North Dakota Century Code, relating to authority to impose restrictions on a motor vehicle operator's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-06-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner, upon issuing an operator's license or a temporary restricted operator's license pursuant to section 39-06.1-11, has authority ~~whenever good cause appears~~ to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the commissioner may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 412

HOUSE BILL NO. 1446  
(Representatives Gorder, Skjerven)  
(Senator Tallackson)

### DRIVERS' LICENSE SUSPENSION EXPUNGEMENT

AN ACT to amend and reenact section 39-06-32 of the North Dakota Century Code, relating to expungement from drivers' records of certain drivers' license suspensions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 39-06-32 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-32. Authority to suspend licenses. The commissioner may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical alcohol test in another state. For purposes of this subsection the specific requirements for establishing a refusal used in the other state may not be considered, and photostatic copies of the records of the other state's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-20-04.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, in violation of section 39-06.1-04, or willful violation of a written promise to appear in court, in violation of section 39-07-08. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the commissioner shall record the suspension

\* NOTE: Section 39-06-32 was also amended by section 4 of House Bill No. 1167, chapter 394.

separately on the driving record. This separate record is not available to the public.

7. An administrative decision in another state that the licensee's privilege to drive in that state is suspended or revoked because of a violation of that state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight. The specific requirements for establishing the violation in the other state may not be considered and certified copies of the records of the other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1.
8. Conviction of an offense under this title and it appears from the commissioner's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 413

HOUSE BILL NO. 1134  
(Committee on Transportation)  
(At the request of the Highway Patrol)

### MOTOR VEHICLE SUSPENSIONS, INSURANCE, AND ABSTRACTS

AN ACT to amend and reenact subsection 1 of section 39-06-42, sections 39-08-20 and 39-16-03 of the North Dakota Century Code, relating to suspension of driving privileges, the owner's responsibility for liability insurance, and the fee requirement for copies of operating record abstracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-06-42 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 39-08-20 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-08-20. Driving without liability insurance prohibited - Penalty. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may not be charged with a violation of this section if that person submits such evidence to the officer or the officer's agency within twenty days of the date of the request. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars.

SECTION 3. AMENDMENT. Section 39-16-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-16-03. Abstract - Not admissible in evidence - Fee. The commissioner upon request shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter



which must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except law enforcement or judicial officers functioning in their official capacity, requesting the abstract shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the abstract.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident.

A fee of three dollars must be paid for each abstract of any operating record, except no fee will be assessed to law enforcement agencies. The commissioner shall send an additional copy of the abstract to the driver whose abstract was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the abstract, and providing the reason for the request. No abstract or statement may be sent to a driver where the request for the driver's abstract was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 414

SENATE BILL NO. 2213  
 (Committee on Transportation)  
 (At the request of the Department of Transportation)

### OPERATOR'S LICENSE SUSPENSION PERIODS

AN ACT to create and enact a new subsection to section 39-06.1-10 of the North Dakota Century Code, relating to the suspension of operators' licenses; to amend and reenact section 39-06-43 and subsection 5 of section 39-06.1-10 of the North Dakota Century Code, relating to the extension of an operator's license suspension or revocation and the constructive delivery of a notice of suspension of a person's driving privilege; and to repeal paragraphs 5, 6, and 7 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to the assessments of points for convictions of driving under the influence or being in actual physical control of a motor vehicle while under the influence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 39-06-43 of the North Dakota Century Code is amended and reenacted as follows:

39-06-43. Extension of license suspension or revocation. The ~~commissioner~~ director upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person was suspended shall extend the period of that suspension for an additional ~~like period and if the original suspension was for an indefinite or unstated period of time; the additional suspension must be for a period of six months on and after the date the person would otherwise have been entitled to the return of license or privileges. If, however, the original suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension.~~

1. Like period not to exceed ninety days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has not been suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
2. One hundred eighty days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or privilege has been once suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
3. One year if the operator's record for the three-year period preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the person's operator's license or

\* NOTE: Section 39-06-43 was also amended by section 1 of Senate Bill No. 2287, chapter 415.

privilege has been at least twice suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance.

If the suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. Suspension periods for failure to appear or to post and forfeit bond on noncriminal traffic violations may be for an indefinite duration. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the ~~commissioner~~ director may not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. Upon a conviction of a person for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the ~~commissioner~~ director shall extend the period of the underlying suspension in accordance with subsection 5 of section 39-06-17.

SECTION 2. A new subsection to section 39-06.1-10 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:

- a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.
- b. Three hundred sixty-four days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.
- c. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.

SECTION 3. AMENDMENT. Subsection 5 of section 39-06.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A suspension must be deemed to have commenced ~~when~~ twenty days after the order of suspension is delivered to the licensee at his address of record in the department. Constructive delivery under this section must be considered as occurring ~~forty-eight~~ seventy-two hours after proper deposit in the mails.

SECTION 4. REPEAL. Paragraphs 5, 6, and 7 of subdivision b of subsection 3 of section 39-06.1-10 of the 1989 Supplement to the North Dakota Century Code are repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 415

SENATE BILL NO. 2287  
(Senator Marks)  
(Representative DeMers)

### OPERATOR LICENSE SUSPENSION EXTENDED

AN ACT to amend and reenact section 39-06-43 of the North Dakota Century Code, relating to extension of license suspension or revocation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 39-06-43 of the North Dakota Century Code is amended and reenacted as follows:

39-06-43. Extension of license suspension or revocation. The commissioner upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person was suspended shall extend the period of that suspension for an additional like period and if the original suspension was for an indefinite or unstated period of time, the additional suspension must be for a period of six months on and after the date the person would otherwise have been entitled to the return of license or privileges. If the original suspension was imposed for violation of section 39-08-01 or equivalent ordinance, the commissioner shall extend the period of that suspension for at least six months. If, however, the original suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the commissioner may not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. Upon a conviction of a person for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the commissioner shall extend the period of the underlying suspension in accordance with subsection 5 of section 39-06-17.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Section 39-06-43 was also amended by section 1 of Senate Bill No. 2213, chapter 414.

# CHAPTER 416

SENATE BILL NO. 2558  
(Schoenwald)

## RAILROAD CROSSING STOP VIOLATIONS

AN ACT to amend and reenact subsection 2 of section 39-06.1-06 and subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to penalty for failure to stop at a railroad crossing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-06 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for a violation of section 39-10-41 or 39-10-42, a fee of fifty dollars.

\* SECTION 2. AMENDMENT. Subdivision a of subsection 3 of section 39-06.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Noncriminal Violations Noncriminal Adjudication or Admission of:	Points Assigned:
(1) Overtime and double parking in violation of city ordinances	0 points
(2) Failure to display license plates	1 point
(3) Permitting unauthorized minor to drive	2 points
(4) Permitting unauthorized person to drive	2 points
(5) Unlawful stopping, standing, or parking on open highway in violation of section 39-10-47	2 points
(6) Unlawful parking in prohibited place	1 point
(7) Leaving motor vehicle	1 point

\* NOTE: Subdivision a of subsection 3 of section 39-06.1-10 was also amended by section 1 of Senate Bill No. 2290, chapter 417.

- improperly unattended on  
an open highway
- (8) Opening or leaving motor vehicle doors open when unsafe to do so 1 point
- (9) Except as provided in sections 39-21-44 and 39-21-45.1, knowingly drove with defective, nonexistent, or unlawful equipment in violation of subsection 1 of section 39-21-46, or equivalent ordinances 2 points
- (10) Careless driving in violation of section 39-09-01, or equivalent ordinance 6 points
- (11) Repealed by S.L. 1981, ch. 389, § 4
- (12) Violating or exceeding restrictions contained in a restricted certificate issued pursuant to section 39-06.1-03 4 points
- (13) Fleeing in motor vehicle from peace officer in violation of section 39-10-71, or equivalent ordinance 24 points
- (14) Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance 10 points
- (15) Exhibition driving in violation of section 39-08-03.1, or equivalent ordinance 3 points
- (16) Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, or 39-10-44, or equivalent ordinances 2 points
- (17) Disobeying an official traffic-control device in violation of section 2 points

- 39-10-04, 39-10-05,  
or 39-10-07, or  
equivalent ordinances
- (18) Driving on wrong side of road in violation of section 39-10-08, 39-10-14, or 39-10-16, or equivalent ordinances 2 points
- (19) Failing to dim headlights in violation of section 39-21-21, or equivalent ordinance 1 point
- (20) Failing to stop at railroad crossing in violation of section 39-10-41 or 39-10-42, or equivalent ordinances + ~~point~~ 3 points
- (21) Knowingly drove with defective brakes in violation of section 39-21-32, or 39-21-33, or equivalent ordinances 2 points
- (22) Disregarding the lawful commands of a police officer in violation of section 39-10-02, or equivalent ordinance 2 points
- (23) Overtaking where prohibited or in an unsafe manner in violation of section 39-10-11, 39-10-12, 39-10-13, or 39-10-15, or equivalent ordinances 2 points
- (24) Overtaking and passing a schoolbus in violation of section 39-10-46, or equivalent ordinance 6 points
- (25) Repealed by S.L. 1985, ch. 430, § 4
- (26) Operating a motor vehicle without a license in violation of section 39-06-01, or equivalent ordinance 4 points
- (27) Improperly operating or unlawfully carrying passengers or packages on 2 points

- a motorcycle in violation of section 39-10.2-02, or equivalent ordinance
- (28) Improperly operating a motorcycle in laned traffic in violation of section 39-10.2-03, or equivalent ordinance 2 points
- (29) Clinging to other vehicles while riding a motorcycle in violation of section 39-10.2-04, or equivalent ordinance 4 points
- (30) Carrying a passenger on a motorcycle not equipped with passenger footrests in violation of section 39-10.2-05, or equivalent ordinance 2 points
- (31) Operating a motorcycle without protective headgear in violation of subsection 1 of section 39-10.2-06, or equivalent ordinance 2 points
- (32) Failing to use the care required in section 39-09-01.1, or equivalent ordinance 2 points
- (33) Except as provided in paragraphs 34 and 37 of subdivision a of subsection 3 of section 39-06.1-10, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance
- |                        |           |
|------------------------|-----------|
| 16 - 20 mph over limit | 3 points  |
| 21 - 25 mph over limit | 4 points  |
| 26 - 35 mph over limit | 6 points  |
| 36 - 45 mph over limit | 8 points  |
| 46 + mph over limit    | 12 points |
- (34) Within city limits on a noncontrolled access highway, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance
- |                        |          |
|------------------------|----------|
| 6 - 10 mph over limit  | 1 point  |
| 11 - 15 mph over limit | 2 points |
| 16 - 20 mph over limit | 3 points |
| 21 - 25 mph over limit | 4 points |
| 26 - 35 mph over limit | 6 points |
| 36 - 45 mph over limit | 8 points |



	46 + mph over limit	12 points
(35)	Driving in violation of section 39-08-18	2 points
(36)	Driving in violation of section 39-08-09	6 points
(37)	On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as posted and designated by the commissioner pursuant to subdivision g of subsection 1 of section 39-09-02, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance	
	Miles per hour over lawful speed limit	Points
	6 - 10	1
	11 - 15	4
	16 - 25	7
	26 - 35	10
	36 +	12

Approved March 25, 1991  
 Filed March 26, 1991

## CHAPTER 417

SENATE BILL NO. 2290  
 (Senators Evanson, Solberg, Streibel)  
 (Representatives Ritter, Oban, Carlisle)

### FUNERAL PROCESSION TRAFFIC RULES

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to traffic regulations governing funeral processions; to amend and reenact paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to point assessments for noncriminal traffic violations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Paragraph 16 of subdivision a of subsection 3 of section 39-06.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- |  |          |
|--|----------|
| (16) Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, <del>or</del> 39-10-44, or section 2 of this Act, or equivalent ordinances | 2 points |
|--|----------|

SECTION 2. A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

Funeral processions - Traffic regulations.

1. Notwithstanding any traffic control device, a law enforcement officer leading a funeral procession may proceed through any intersection or make any turns or other movements necessary while leading the procession. The officer, without regard to any traffic control device, may direct other drivers not in the funeral procession to stop, turn, proceed, or make other movements. When leading the funeral procession, the officer shall be in a marked patrol vehicle and the vehicle's lighted headlamps, taillamps, and top- and grill-mounted signal lamps must be displayed at all times during the procession.
2. Notwithstanding any traffic control device or provision governing the right of way, whenever a law enforcement officer leading a funeral procession enters an intersection, the remainder of the vehicles in the funeral procession may follow through the intersection. Each vehicle in the procession, however, must exercise reasonable care toward any other vehicle or pedestrian on the roadway.

\* NOTE: Subdivision a of subsection 3 of section 39-06.1-10 was also amended by section 2 of Senate Bill No. 2558, chapter 416.

3. Notwithstanding any traffic control device or provision governing rights of way and subject to the following conditions, vehicles in funeral procession have the right of way.
- a. All vehicles in a funeral procession must display lighted headlamps, taillamps, and flashing emergency lamps.
  - b. All vehicles in a funeral procession must follow the preceding vehicle in the procession as closely as is safe and practicable.
  - c. The driver of a vehicle in a funeral procession shall yield the right of way to an approaching emergency vehicle when directed to do so by a law enforcement officer or when the vehicle is giving an audible or visual signal.
  - d. A vehicle that becomes separated from the funeral procession and the law enforcement escort, so that the procession is no longer continuous, must proceed to its destination in a safe and prudent manner obeying all traffic signals and general rules of the road.
4. Other vehicles shall conform to the following rules:
- a. The driver of a vehicle may not drive between the vehicles comprising a funeral procession while those vehicles are in motion, except when authorized to do so by a law enforcement officer or when such vehicle is an emergency vehicle giving an audible or visible signal.
  - b. The driver of a vehicle not part of a funeral procession may not join a funeral procession for the purpose of securing the right of way granted under subsection 3.
  - c. The driver of a vehicle not in a funeral procession may not pass vehicles in such a procession on a two-lane highway or roadway.
  - d. The driver of a vehicle may pass a funeral procession on its left side on any multiple-lane highway whenever such passing can be done safely, unless the procession is in the farthest left lane, in which case passing is permissible on the right.
  - e. When a funeral procession is proceeding through a red signal as permitted by subsection 3, a vehicle that is not in the procession may not enter the intersection unless it can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is still within the intersection, a vehicle facing a green signal may proceed, but the funeral procession has the right of way.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 418

SENATE BILL NO. 2539  
(Tennefos)

### TRAFFIC OFFENSE ALTERNATIVE DISPOSITION

AN ACT to create and enact a new section to chapter 39-06.1 of the North Dakota Century Code, relating to alternative disposition of traffic offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-06.1 of the North Dakota Century Code is created and enacted as follows:

Alternative disposition - Driver training course - Exceptions. A person issued a summons or notice to appear under section 39-07-07 may appear before the court and elect to attend a driver training course approved by the director in lieu of entry of points on the licensee's driving record. A person who elects to attend the course must so notify the court at the time of posting the bond, which is forfeited even though an election is made under this section. The person who makes the election shall pay the driver training course fee to the driver training course sponsor. When a person elects to attend the course, the point penalty of five points or fewer as provided for the violation by section 39-06.1-10 may not be assessed; provided, that proof of completion of the course is presented to the department within thirty days after the person notifies the court of the election. A person may not make an election under this section if (1) that person has made an election under this section within the twelve months preceding the date of issuance of the summons or notice to appear; (2) the offense is assigned six or more points; or (3) the offense is an offense listed in section 39-06.1-05. A person making an election under this section forfeits any point reduction option under section 39-06.1-13.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 419

SENATE BILL NO. 2083  
(Satrom)

### TEMPORARY RESTRICTED LICENSES

AN ACT to amend and reenact subsection 2 of section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the licensing authority has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, the authority may, in accordance with this section, for good cause, and upon written application of the offender, issue a temporary restricted license which takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The licensing authority may not issue a temporary restricted license to any offender whose operator's license ~~is under suspension~~ has been suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if no offenses have been committed for a period of two years before the date of the filing of a written application accompanied by a report from an addiction facility. The commissioner may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior for the two-year period. The commissioner may also require that an ignition interlock device be installed in the offender's vehicle. The licensing authority may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, subsection 3.1 of section 39-06.1-10, or section 39-20-04, ~~or imposed for an alcohol-related offense under section 39-06-43.~~ A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct, but no temporary restricted license may be issued for suspensions ordered under subsection 4 of section 39-06-32.

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

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 420

SENATE BILL NO. 2521  
(Krauter, Schoenwald)

### DRIVER COURSE CERTIFICATE ISSUANCE

AN ACT to amend and reenact subsection 2 of section 39-06.1-13 of the North Dakota Century Code, relating to certification of successful completion of a driver training course.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. The point total shown on a licensee's driving record must, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the licensing authority indicating successful completion of instruction in a driver training course approved by the licensing authority. Successful completion of instruction must be certified to by the instructor sponsoring agency or organization of the driver training course. The reduction in points authorized by this subsection must only be from a point total accumulated prior to completion of the necessary hours of driver training instruction, and may not exceed nine points during any three-year period commencing on the date of entry of the last points against the person's driving record. If on the date the licensing authority receives the certificate of completion of the driver training course from the licensee, that licensee's driving record contains twelve or more points, the point reduction authorized by this subsection must be applied only after the period of suspension required by the number of points then on the driver's record has been served.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 421

HOUSE BILL NO. 1492  
(Timm, Wald)

### COMMERCIAL DRIVER RECORDS

AN ACT to repeal section 39-06.2-13 of the North Dakota Century Code, relating to availability of commercial driver record information; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 39-06.2-13 of the 1989 Supplement to the North Dakota Century Code is repealed.

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

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 422

SENATE BILL NO. 2329  
(Senators Maxson, Stenehjem)  
(Representatives Snyder, Kretschmar)

**TRAFFIC OFFENSE COURT HEARINGS**

AN ACT to amend and reenact section 39-07-08 of the North Dakota Century Code, relating to scheduling of court hearings for certain traffic offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-07-08 of the North Dakota Century Code is amended and reenacted as follows:

39-07-08. Hearing - Time - Promise of defendant to appear - Failure to appear - Penalty. The time to be specified in the summons or notice provided for in section 39-07-07 must be within ~~ten days~~ thirty-five days after the issuance of the summons or notice ~~unless~~ or earlier if so ordered by the magistrate of the city or county having jurisdiction over the offense or if the person halted demands an earlier hearing, and, if the person halted desires, the person may have the right, at a convenient hour, to an immediate hearing or to a hearing within twenty-four hours. The hearing must be before a magistrate of the city or county in which the offense was committed. If an immediate hearing is demanded, a county judge serving more than one county, may, with the consent of the respective prosecuting attorneys, order the hearing to be held in any of the counties in which the county judge has jurisdiction, rather than in the county where the offense was allegedly committed. Upon the receipt from the person halted of a written promise to appear at the time and place mentioned in the summons or notice, the officer shall release the person from custody. Any person refusing to give a written promise to appear must be taken immediately by the halting officer before the nearest or most accessible magistrate, or to such other place or before such other person as may be provided by a statute or ordinance authorizing the giving of bail. Any person willfully violating the person's written promise to appear is guilty of a class B misdemeanor, regardless of the disposition of the charge upon which the person originally was halted. The time limitations for a hearing as provided by this section do not preclude a recharging of the alleged violation if the person being charged receives a new summons or notice subject to the provisions of this section.

Approved April 5, 1991  
Filed April 8, 1991



## CHAPTER 423

SENATE BILL NO. 2350  
(Senators Schoenwald, Holmberg)  
(Representatives Belter, Snyder)

### INTRASTATE COMMERCIAL DRIVERS' QUALIFICATIONS

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to a medical qualifications exemption for intrastate drivers of commercial motor vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

Medical qualifications exemption for intrastate drivers. Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection 2 of section 39-21-46, the provisions of 49 CFR Section 391.41(b)(1)-(11) do not apply to a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on the effective date of this Act, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state;
3. Does not operate a motor vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued pursuant to the Hazardous Materials Transportation Act [49 U.S.C. App. 1801 et seq.]; and
4. Has a medical or physical condition which:
  - a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, Chapter III, subchapter B;
  - b. Existed on the effective date of this Act or at the time of the first required physical examination after that date; and
  - c. An examining physician has determined has not substantially worsened since the effective date of this Act or the time of the first required physical examination after that date.

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

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 424

SENATE BILL NO. 2530  
(O. Hanson, Vosper)

### RAILROAD CROSSING STOPS

AN ACT to amend and reenact sections 24-09-05 and 39-10-43 of the North Dakota Century Code, relating to exemptions from required stops at railroad grade crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-09-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-09-05. Stop signs may be required. At each grade crossing where, because of the dangers attendant upon its use, the reasonable protection to life and property makes it necessary for all persons approaching the same to stop before crossing the railroad tracks thereat, stop signs shall be installed. The department, after performing an engineering study of the crossing, may designate any crossing requiring such additional protection as a stop crossing, and shall notify the railway company operating the railroad thereat road authority with jurisdiction over the roadway of such designation and of the location where the stop sign is to be installed. Within thirty days after such notification the railway company road authority shall erect uniform stop crossing signs in conspicuous places on separate posts at the designated location on each side of said crossing.

SECTION 2. AMENDMENT. Section 39-10-43 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-10-43. Certain vehicles must stop at all railroad grade crossings.

1. The driver of a bus carrying passengers, or of any schoolbus, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and may not proceed until the driver can do so safely. After stopping as required

herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver may not manually shift gears while crossing the track or tracks.

2. No stop need be made at any such crossing at which traffic is controlled by a police officer. For the purposes of this section, a United States marshal must be considered a police officer.
3. No stop need be made at a crossing that the director has designated as an out-of-service crossing and which is clearly marked by signs bearing the words "Tracks out of service" in conspicuous places on each side of the crossing.
4. The designation must be limited to use at crossings where track has been abandoned or its use discontinued.
5. The director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the director has designated as an out-of-service crossing under this section and the road authority shall erect signs bearing the words "Tracks out of service" in conspicuous places on each side of the crossing. The railway company shall remove the crossbucks.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 425

HOUSE BILL NO. 1076  
(Kloubec)

### **PARKING VIOLATION RESPONSIBILITY**

AN ACT to create and enact a new section to chapter 39-10 of the North Dakota Century Code, relating to the responsibility of motor vehicle lessors for parking violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-10 of the North Dakota Century Code is created and enacted as follows:

Parking violations - Lessor responsibility. The registered owner of a motor vehicle stopped, stood, or parked in violation of this chapter or section 39-01-15 or an equivalent ordinance is not responsible for the violation if the owner furnishes an affidavit indicating that the vehicle was at the time of the violation in the care, custody, or control of another person pursuant to a lease or rental agreement. The affidavit must contain the name, address, and operator's license number of the person to whom the vehicle was leased or rented at the time of the violation and must be submitted to the appropriate clerk of court within thirty days of notification to the owner of the violation. The owner is responsible for the violation and the payment of any fees or fines if the affidavit is not submitted within the thirty-day period.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 426

SENATE BILL NO. 2122  
(Committee on Transportation)  
(At the request of the Highway Patrol)

### OVERSIZE VEHICLE SPECIAL PERMIT

AN ACT to amend and reenact section 39-12-02 of the North Dakota Century Code, relating to obtaining special permits for vehicles of excessive size and weight.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every such permit may designate the route to be traversed, and may contain any other restrictions or conditions deemed necessary by the body granting such permit. Every such permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of the provisions of this chapter for any person to violate any of the terms or conditions of such special permit. All permits for the movement of excessive size and weight on state highways must be single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.

An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund and are hereby appropriated for use in the construction and maintenance of highways and operating expenses of the highway department of transportation. For each permit for the movement of a mobile home or modular unit, the fee is ten dollars. Official or publicly owned vehicles may not be required to pay charges for permits. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 427

HOUSE BILL NO. 1567  
(Representatives Kerzman, Meyer, Brokaw)  
(Senator Krauter)

### HAY MOVERS HOURS OF MOVEMENT

AN ACT to amend and reenact subdivision d of subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to commercial movement of haystacks or hay bales during daylight hours on any day of the week.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 39-12-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders, which may be operated on the highway after obtaining a permit issued by the highway patrol. The highway patrol shall issue permits that are valid during daylight hours on any day of the week to any commercial mover otherwise qualified under this subdivision. The permit is in lieu of registration requirements for the permit period. No permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 428

HOUSE BILL NO. 1047  
(Legislative Council)  
(Interim Jobs Development Commission)

### DIRECTIONAL SIGNS

AN ACT to create and enact a new section to chapter 39-13 of the North Dakota Century Code, relating to tourist-oriented directional signs on state highway right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-13 of the North Dakota Century Code is created and enacted as follows:

Tourist-oriented directional signs.

1. In this section:

- a. "Tourist-oriented directional sign" means a sign providing identification of and directional information for tourist-related businesses, services, or activities.
- b. "Tourist-related business, service, or activity" means destination tourism attractions, including recreation, historical sites, festival and cultural events, lodging and food services which are singularly and uniquely related to historical, cultural, or recreational tourist attractions, and guide services, but does not include any business operated under a franchise agreement.

2. Notwithstanding section 24-01-12, the department shall establish by rule standards for the erection and maintenance of tourist-oriented directional signs. The rules must conform to federal standards for tourist-oriented directional signs adopted under 23 U.S.C. 131(q) as of the effective date of this Act and with the manual of uniform traffic-control devices adopted by the department under section 39-13-06 except that the rules must provide that logos may not be used on tourist-oriented directional signs. The rules must require that each sign must be seventy-two inches wide and sixteen inches high. The rules must include all of the following:

- a. Criteria for eligibility for signing.
- b. Criteria for limiting or excluding businesses, services, and activities that maintain signs that do not conform to requirements under 23 U.S.C. 131.

- c. Provisions for fees to cover costs of sign manufacture, erection, and maintenance to be collected through a permit system.
  - d. Provisions specifying sign design and composition.
  - e. Criteria for determining when to permit advance signing.
  - f. Criteria for determining when to permit signing for facilities that are not located on a crossroad of a highway upon which tourist-oriented directional signs are permitted.
  - g. Criteria for signing at at-grade intersections of expressways.
  - h. Provisions specifying conditions under which the time of operation of a business, service, or activity is shown.
  - i. Provisions for covering or removing signs during off seasons for businesses, services, and activities operated on a seasonal basis.
  - j. Provisions specifying the maximum number of signs permitted per intersection.
  - k. Provisions for limiting the number of signs.
3. Upon the request of any person, a local authority that has adopted an ordinance permitting the erection of tourist-oriented directional signs may authorize their erection within the right of way of any highway under the jurisdiction of the local authority except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. No tourist-oriented directional sign may be erected unless it is erected in compliance with rules adopted by the department for such signs.
  4. The department shall contract for the erection, installation, and maintenance of tourist-oriented directional signs within the right of way of any highway under the jurisdiction of the department except that tourist-oriented directional signs may not be erected within the right of way of the interstate highway system. No tourist-oriented directional sign may be erected unless it is erected in compliance with rules adopted by the department for such signs.

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 429

HOUSE BILL NO. 1202  
(Committee on Judiciary)

(At the request of the Department of Transportation)

### ADMINISTRATIVE HEARINGS FOR ALCOHOL OFFENSES

AN ACT to amend and reenact subsection 2 of section 39-20-04 and subsection 1 of section 39-20-05 of the North Dakota Century Code, relating to the time for entering a notice of intent to enter a guilty plea to a driving under the influence charge in lieu of a revocation of driving privileges and the time for scheduling an implied consent administrative hearing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-20-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A person's driving privileges are not subject to revocation under this section if all of the following criteria are met:
  - a. No administrative hearing request is made under section 39-20-05;
  - b. The person mails an affidavit to the ~~commissioner~~ director within ~~ten~~ twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
    - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
    - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn.

- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the temporary operator's permit is issued; and
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the return or reinstatement of the person's driving privileges.

SECTION 2. AMENDMENT. Subsection 1 of section 39-20-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the ~~commissioner~~ director shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the ~~commissioner~~ director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within twenty-five days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within thirty-five days after the issuance of the temporary operator's permit if good cause is shown to accommodate the efficient scheduling of hearings. Upon a showing of good cause by the operator, or upon learning of the unavailability of the operator, or the operator's attorney, or a witness, the hearing officer may schedule the hearing on a date within forty-five days of the date of the operator's arrest. If the hearing date is extended beyond twenty-five days from the issuance of the temporary operator's permit, the ~~commissioner~~ director shall provide extended temporary operator's privileges to the date of the hearing. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the ~~commissioner's~~ director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 430

SENATE BILL NO. 2416  
(Senator Stenehjem)  
(Representative Price)

## RURAL MAIL VEHICLES

AN ACT to amend and reenact section 39-21-18.1 of the North Dakota Century Code, relating to flashing signals on rural mail vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-18.1 of the North Dakota Century Code is amended and reenacted as follows:

39-21-18.1. Flashing signals on rural mail vehicle - Standards. Notwithstanding any other provision of law, it is lawful for any vehicle regularly used as a rural mail delivery vehicle to display two simultaneously flashing amber lamps mounted on top of such vehicle while it is being used to deliver mail. ~~Such~~ The light assembly must consist of two lamps mounted on top of ~~such~~ the vehicle with one lamp being as near as is practicable to each side of the vehicle, displaying an amber light not less than four inches [10.16 centimeters] in diameter and visible under normal atmospheric conditions for a distance of at least five hundred feet [152.4 meters] to the front and to the rear of such vehicle. The lamp assembly must include a sign at least seven inches [17.78 centimeters] in height containing the words "U.S. MAIL" in black letters not less than four inches [10.16 centimeters] in height and of not less than three-quarters of an inch [19.05 millimeters] in width of stroke, upon a white background. ~~Such~~ The sign must be constructed so as to permit folding down out of the line of vision when not in use. The lamps must be equipped with a device to cause them to flash on and off, and such lamps must be so wired as to cause both lamps to flash simultaneously. ~~The~~ In lieu of the light assembly permitted by this section, a vehicle may display one revolving amber light placed on top of the vehicle and accompanied by a sign placed on the rear of the vehicle and containing the words "U.S. MAIL." The light and sign must comply with the requirements applicable to the amber lights and sign used with a light assembly permitted by this section. Amber lights must be electrically controlled so that the lights will permitted by this section may only be actuated when the vehicle is brought to a stop operated for the purpose of discharging official duties and must not be in operation except during the actual performance of duty delivering mail.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 431

SENATE BILL NO. 2251  
(Satrom)

### CHILD RESTRAINTS IN MOTOR VEHICLES

AN ACT to amend and reenact subsection 1 of section 39-21-41.2 of the North Dakota Century Code, relating to the required use of child restraint devices in motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 39-21-41.2 of the North Dakota Century Code is amended and reenacted as follows:

1. If a child, under three years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of three ~~to five~~ through ten years of age who is in the motor vehicle must be in an approved child restraint system or buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle, this section does not apply.

Approved March 11, 1991  
Filed March 11, 1991

\* NOTE: Section 39-21-41.2 was also amended by section 1 of Senate Bill No. 2557, chapter 432.

## CHAPTER 432

SENATE BILL NO. 2557  
(Senators O'Connell, Kinnoin, Bowman)  
(Representatives Jacobson, Pyle, Porter)

### CHILD RESTRAINT DEVICE EXCEPTION

AN ACT to amend and reenact section 39-21-41.2 of the North Dakota Century Code, relating to the required use of child restraint devices in motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 39-21-41.2 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.2. Child restraint devices - Penalty - Evidence.

1. If a child, under three years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. The child restraint system must meet the standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of three to five years of age who is in the motor vehicle must be in an approved child restraint system or buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle or if a child is being transported in an emergency situation, this section does not apply.
2. Violation of this section is punishable by a fine not to exceed twenty dollars.
3. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Section 39-21-41.2 was also amended by section 1 of Senate Bill No. 2251, chapter 431.

## CHAPTER 433

HOUSE BILL NO. 1284  
(Representatives Wald, Skjerven)  
(Senators Lips, Graba)

### SUNDAY MOTOR VEHICLE SALES

AN ACT to create and enact a new section to chapter 39-22 of the North Dakota Century Code, relating to prohibiting the sale of motor vehicles on Sundays; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Motor vehicle sales prohibited on Sunday - Penalty. A motor vehicle dealer may not sell a motor vehicle on Sunday. A violation of this section is a class B misdemeanor.

SECTION 2. EFFECTIVE DATE. This Act is contingent on the passage of House Bill No. 1046 by the fifty-second legislative assembly. If this Act takes effect it becomes effective immediately.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 1991  
Filed March 26, 1991

## CHAPTER 434

HOUSE BILL NO. 1114  
(Committee on Transportation)  
(At the request of the North Dakota Parks and  
Recreation Department)

### SNOWMOBILE REGISTRATION TIMES

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code, relating to registration of snowmobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-24-03. Registration - Application - Issuance - Fees - Renewal. Application for registration must be made to the department in a form as the department shall prescribe and furnish, and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.

Upon receipt of the application and the appropriate fee as hereinafter provided, the snowmobile must be registered and a registration number and a certificate of registration assigned. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material, and must be securely affixed on each side of the forward half of the snowmobile in such position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.

The fee for registration of each snowmobile must be three dollars for a registration period of two years beginning ~~January~~ October first of each ~~even-numbered~~ odd-numbered year effective ~~January 1, 1991~~ October 1, 1991. To implement this Act, on January 1, 1992, the department shall register each snowmobile registered before the effective date of this Act for a one-time period of twenty-one months. The fee for initial registration of each snowmobile registered on and after ~~January~~ January ~~October~~ first of the second year of the two-year registration period must also be three dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed three dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of seventeen dollars.

Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

Approved March 19, 1991  
Filed March 19, 1991



## CHAPTER 435

HOUSE BILL NO. 1568  
(Representatives Myrdal, Wald)  
(Senators O. Hanson, Satrom, Schoenwald)

### SNOWMOBILE FUND TRANSFER

AN ACT to amend and reenact section 39-24-05 of the North Dakota Century Code, relating to the disposition of snowmobile registration and trail tax fees, and providing for an annual transfer of highway tax distribution fund moneys to the snowmobile fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on thirty gallons of motor vehicle fuel multiplied by the number of snowmobiles registered under this chapter must be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The state parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and administering, establishing, and maintaining snowmobile facilities and programs.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 436

HOUSE BILL NO. 1152  
(Committee on Transportation)  
(At the request of the North Dakota Parks and  
Recreation Department)

### SNOWMOBILE TRESPASSING

AN ACT to amend and reenact section 39-24-11 of the North Dakota Century Code, relating to penalties for failure to register ownership of snowmobiles and for trespassing with a snowmobile on posted land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

39-24-11. Penalties. Any person who violates subdivision b ~~or~~, c, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of twenty-five dollars. A person who operates an unregistered snowmobile on land owned, leased, or managed by the parks and recreation department must be assessed a fee of fifty dollars; however, if the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 437

HOUSE BILL NO. 1144  
(Committee on Transportation)  
(At the request of the Superintendent of Public Instruction)

### MOTORCYCLE SAFETY ADMINISTRATION

AN ACT to amend and reenact sections 39-28-02 and 39-28-03 of the North Dakota Century Code, relating to transferring responsibility for motorcycle safety courses and reimbursement for the cost of those courses from the superintendent of public instruction to the director of the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-28-02 of the North Dakota Century Code is amended and reenacted as follows:

39-28-02. ~~Superintendent of public instruction~~ Director to establish standards for motorcycle safety courses. The ~~superintendent of public instruction~~ director shall establish requirements for instructional standards, course approval, and teacher certification standards for motorcycle safety courses required by this chapter. Motorcycle safety courses may be offered by public schools and by approved organizations which meet instruction, course, and teacher certification requirements. The ~~superintendent~~ director may adopt rules governing the operation of motorcycle safety courses, administer moneys pursuant to this chapter, conduct audits and otherwise examine the records and accounts of approved motorcycle safety courses, and require other information as may be necessary to monitor the quality of motorcycle safety courses.

SECTION 2. AMENDMENT. Section 39-28-03 of the North Dakota Century Code is amended and reenacted as follows:

39-28-03. Reimbursement for motorcycle safety courses. The ~~superintendent~~ director shall reimburse public schools and organizations offering approved motorcycle safety courses for the actual cost of the courses. The amount of reimbursement for each student may not exceed the actual per-pupil cost for the motorcycle safety program.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 438

HOUSE BILL NO. 1157  
(Committee on Transportation)  
(At the request of the North Dakota Parks and  
Recreation Department)

### ALL-TERRAIN VEHICLE TRESPASSING

AN ACT to amend and reenact section 39-29-12 of the North Dakota Century Code, relating to penalties for failure to register ownership of all-terrain vehicles and for trespassing with an all-terrain vehicle on posted land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-29-12 of the North Dakota Century Code is amended and reenacted as follows:

39-29-12. Penalties. Violation of subdivision b ~~or~~, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of twenty-five dollars must be assessed; however, if the violation occurs on land owned, leased, or managed by the parks and recreation department a fee of fifty dollars must be assessed. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 439

SENATE BILL NO. 2410  
(Stenehjem)

### CHOP SHOPS

AN ACT to provide for a model act relating to motor vehicle chop shops and stolen and altered motor vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "Chop shop" means any building, lot, or other premises where one or more persons knowingly, as defined by section 12.1-02-02, engage in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to either:
  - a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part; or
  - b. Sell or dispose of the motor vehicle or motor vehicle part.
2. "Motor vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and includes any and all other land-based devices that are self-propelled but which are not designed for use upon a highway, including farm machinery and construction equipment.
3. "Person" includes a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other legal entity.
4. "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

5. "Vehicle identification number" means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer or the department of motor vehicles for the purposes of uniquely identifying a motor vehicle or motor vehicle part. The term includes a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof.

## SECTION 2. Violations and penalties.

1. It is a class B felony if any person knowingly, as defined in section 12.1-02-02, and with intent that a violation of subsection 2 be committed:
  - a. Owns, operates, or conducts a chop shop;
  - b. Transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or
  - c. Sells, transfers, purchases, or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.
2. Any person who knowingly, as defined in section 12.1-02-02, alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part, is guilty of a class B felony.
3.
  - a. Any person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, is guilty of a class B felony.
  - b. The provisions of subdivision a do not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during any such processing.
  - c. The provisions of subdivision a do not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or where the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It is presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed,

when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.

4. No prosecution may be brought, and no person may be convicted, of any violation under this section, if acts of the person otherwise constituting a violation were done in good faith in order to comply with the laws or regulations of any state or territory of the United States, or of the federal government of the United States.
5. The sentence imposed upon a person convicted of any violation of this section may not be reduced to less than four years imprisonment for a second conviction of any violation of this section, or less than eight years for a third or subsequent conviction of any violation of this section, and no sentence imposed upon a person for a second or subsequent conviction of any violation of this section may be suspended or reduced until the person has served the minimum period of imprisonment provided in this section. A person convicted of a second or subsequent violation of this section is not eligible for probation, parole, furlough, or work release.
6. a. In addition to any punishment, a person who violates this section, must be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

As used in this section, "financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. As used in this section, "lawful owner" includes an innocent bona fide purchaser for value of a stolen motor vehicle part who does not know that the motor vehicle or part is stolen, or an insurer to the extent that the insurer has compensated a bona fide purchaser for value.

- b. The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

### SECTION 3. Seizure of equipment.

1. Any tool, implement, or instrumentality including a motor vehicle or motor vehicle part, used or possessed in connection with any violation of section 2 of this Act may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.

2. Seizure of property described in subsection 1 may be made by a member of a state or local law enforcement agency without process:
  - a. If in accordance with any applicable law or regulation;
  - b. If the seizure is incident to inspection under an administrative inspection warrant;
  - c. If the seizure is incident to search made under a search warrant;
  - d. If the seizure is incident to a lawful arrest;
  - e. If the seizure is made pursuant to a valid consent to search;
  - f. If the property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding, or in an injunction or forfeiture proceeding under section 5; or
  - g. If there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.
3. When property is seized under this section, the seizing agency may:
  - a. Place the property under seal; or
  - b. Remove the property to a place selected and designated by the seizing party.

#### SECTION 4. Forfeiture of property.

1. The following are subject to forfeiture unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:
  - a. Any tool;
  - b. Any implement; or
  - c. Any instrumentality, including any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of section 2 of this Act or to promote or facilitate a violation of section 2 of this Act.
2. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section if the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of section 2 of this Act.
3. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission that the owner proves to have been committed or omitted without the owner's knowledge or consent.



4. a. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in it. In its reasonable identification and owner location attempts, the seizing agency shall cause the stolen motor vehicle files of all law enforcement agencies to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.
- b. If a motor vehicle or motor vehicle part has an apparent value in excess of one thousand dollars:
  - (1) The seizing agency shall consult with an expert of the type specified in subsection 4 of section 1 of this Act; and
  - (2) The seizing party shall request searches of the on-line and off-line files of the national crime information center and the national automobile theft bureau when files have been searched with negative results.
5. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.
6. Property, described in subsection 1, seized and held for forfeiture, is not subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.
7. a. A states attorney in the county where the seizure occurs shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action must be brought within sixty days from the date of seizure except when the states attorney in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.
- b. The states attorney shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record maintained in the department of transportation, or any other department of the state, or any other state or territory of the United States, or of the federal government if the property is required to be registered in any such department.
- c. Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.
- d. The owner of the property, or any person having, or claiming, right, title, or interest in the property may within sixty days

- after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.
- e. The states attorney must show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of section 2 of this Act, or was used or possessed to facilitate such violation.
  - f. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.
  - g. Unless the states attorney makes the required showing, the court shall order the property released to the owner. If the states attorney has made such a showing, the court may order:
    - (1) The property be destroyed by the agency that seized it or some other agency designated by the court;
    - (2) The property be delivered and retained for use by the agency that seized it or some other agency designated by the court; or
    - (3) The property be sold at public sale.
8. A copy of a forfeiture order must be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to which the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.
  9. Proceeds from the sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, must be paid to the general fund of the county of seizure.
  10. No motor vehicle, either seized under section 3 of this Act or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either assigned or replacement vehicle identification number plates as may be appropriate under laws of this state.
  11. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number may be disposed of upon forfeiture except by destruction. This subsection does not apply to any motor

vehicle part that is assembled with and constitutes part of a motor vehicle.

12. No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part that is unidentifiable must be the subject of a written report sent by the seizing agency to the department of transportation. The report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.
13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty days or more after the notice to the department of transportation specified in subsection 12 has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale must be posted in a conspicuous place for at least thirty days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.
14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of one thousand dollars or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition may be made less than sixty days after the date of seizure.
15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the general fund of the state or other governmental unit after deduction of any reasonable and necessary towing and storage charges.
16. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. The owner of a motor vehicle or a motor vehicle part may not be required to pay more than the minimum reasonable costs of towing and storage.
17. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the states attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination, which may not exceed fourteen days from the date of service upon the defense of the notice of request for return of property, the property must be released to the person making such request after satisfactory proof of the person's entitlement to possession. Notwithstanding the foregoing, upon application by

either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

18. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one year from the date of the transaction.
19. When an applicant for a certificate of title or salvage certificate presents to the department of transportation proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the department of transportation shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

#### SECTION 5. Civil proceedings and remedies.

1. The attorney general, any states attorney, or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of this Act. If the plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgement, including:
  - a. Ordering any defendant to be divested of any interest in any property;
  - b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;
  - c. Ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority; or
  - d. Ordering the surrender of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this Act and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

2. In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.
3. Any person injured, directly or indirectly, by conduct constituting a violation by any person of section 2 of this Act, in addition to any other relief, has a cause of action for threefold the actual damages sustained by the person.
4. A final judgment or decree rendered against the defendant in any civil or criminal proceeding estops the defendant in any subsequent civil action or proceeding brought by any person as to all matters to which the judgment or decree would be an estoppel between the parties to the civil or criminal proceeding.
5. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five years after the conduct made unlawful under section 2 of this Act terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a states attorney to punish, prevent, or restrain any activity made unlawful under section 2 of this Act, the running of the period of limitations is suspended during the pendency of such action and for two years following its termination.
6. Personal service of any process in any action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of section 2 of this Act in this state. The person is deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.
7. Obtaining any civil remedy under this section does not preclude obtaining any other civil or criminal remedy under either this Act or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

SECTION 6. Venue. A criminal prosecution for any violation may be commenced in any county, without regard to place of occurrence.

Approved April 3, 1991  
Filed April 4, 1991

# MUNICIPAL GOVERNMENT

## CHAPTER 440

SENATE BILL NO. 2295  
(Senators Stenehjem, Graba, Holmberg)  
(Representative St. Aubyn)

### CITY COUNCIL MEMBER REFERENCES

AN ACT to amend and reenact sections 23-04-01, 40-02-11, 40-08-01, 40-08-03, 40-08-03.1, 40-08-03.2, 40-08-04, 40-08-04.1, 40-08-05, 40-08-06, 40-08-06.1, 40-08-07, 40-08-08, 40-09-05, 40-14-01, 40-14-02, 40-14-06, 40-21-03, 40-21-09, and 40-52-08 of the North Dakota Century Code, relating to city council members and removing references to alderman and aldermen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-04-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-04-01. Board of health in council cities. The board of health in a city operating under the council form of government is under the supervision of the state department of health and consolidated laboratories and ~~shall consist~~ consists of the following members:

1. Four ~~aldermen~~ council members appointed by the mayor at the first meeting of the city council in April of each year.
2. The city engineer.
3. The city health officer.

SECTION 2. AMENDMENT. Section 40-02-11 of the North Dakota Century Code is amended and reenacted as follows:

40-02-11. Division into wards. If a majority of the votes cast at the election provided for in this chapter favored incorporation as a municipality city, the board of county commissioners which that ordered the election shall, if the territory has been incorporated as a city under the council form of government, ~~proceed to divide the municipality city~~ into wards. The city ~~shall may~~ not be divided into wards unless it has more than six hundred inhabitants, ~~and if it.~~ If the city has more than six hundred inhabitants, one ward ~~shall must~~ be formed for each two ~~aldermen~~ council members to which the city is entitled. In cities of more than fifteen thousand inhabitants, however, the number of wards ~~shall be~~ is limited to seven originally, and ~~such~~ that number may be increased thereafter as provided in this title. Each ward ~~shall must~~ be formed from contiguous territory, and all wards ~~shall must~~ be numbered consecutively and ~~shall must~~ have, as nearly as practicable, the same number of inhabitants. After the election of ~~aldermen it shall thereafter be the duty of council members,~~ the governing body of the city shall form or establish wards pursuant to law.

SECTION 3. AMENDMENT. Section 40-08-01 of the North Dakota Century Code is amended and reenacted as follows:

40-08-01. City council - Who constitutes. The governing body of a city operating under the council form of government ~~shall be~~ is the city council, which ~~shall be~~ is composed of the mayor and ~~aldermen~~ council members.

\* SECTION 4. AMENDMENT. Section 40-08-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-03. Number of ~~aldermen~~ council members determined by population - Census to govern. The number of ~~aldermen~~ shall be as follows council members is:

1. In cities of two hundred inhabitants or less, four, except that the city council may by resolution duly adopted reduce the number of ~~aldermen~~ to two.
2. In cities of more than two hundred but not more than six hundred inhabitants, four.
3. In cities of more than six hundred but not more than two thousand inhabitants, six.
4. In cities of more than two thousand but not more than four thousand inhabitants, eight.
5. In cities of more than four thousand but not more than ten thousand inhabitants, twelve.
6. In cities of more than ten thousand inhabitants, fourteen.
7. Cities of ten thousand or more inhabitants which have been incorporated and operating under the council form of government may change to a ten ~~aldermen~~ council members and mayor organization upon approval by a majority vote at a special election called pursuant to the procedure ~~hereinafter~~ provided in this chapter.

Whenever a census of the city ~~shall show~~ shows a population requiring more ~~aldermen~~ council members than are in the council at the time of taking ~~such~~ the census, the city council ~~shall be~~ is not required to make a change in the number of ~~aldermen~~ council members and the corresponding change in the number of wards of ~~such~~ the city unless a majority of the qualified electors ~~thereof~~ of the city, to be determined by the number of names on the poll list of the last city election, petition ~~therefor~~ for a change.

SECTION 5. AMENDMENT. Section 40-08-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-03.1. Change to ten ~~aldermen~~ council members and mayor - Petition required. Any city of more than ten thousand inhabitants operating under the council form of government may change its organization ~~thereunder~~ and operate with ten ~~aldermen~~ council members and mayor. The proceeding to change ~~shall~~ must be initiated by a petition asking for ~~such~~ the change signed by not less than one-third of the qualified electors of the city as determined by the total number of qualified electors voting at the preceding

\* NOTE: Section 40-08-03 was also amended by section 1 of House Bill No. 1083, chapter 444.

general election. The signatures to ~~such~~ the petition need not be appended to a single paper, but one of the signers upon each paper ~~shall~~ must make oath before an officer competent to administer oaths that each signature appearing upon ~~such~~ the paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, ~~shall~~ must contain the name, address, and age of each petitioner, and the length of ~~his~~ the petitioner's residence in the city. Any petitioner ~~shall be permitted to~~ may withdraw ~~his~~ the petitioner's name from a petition within five days after the petition is filed.

SECTION 6. AMENDMENT. Section 40-08-03.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-03.2. City auditor to pass on sufficiency of petition requesting change to ten ~~aldermen council members~~ and mayor. Within thirty days after a petition to change to ten ~~aldermen council members~~ and mayor is filed, the city auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the required number of qualified electors. ~~He~~ The city auditor shall attach to the petition ~~his~~ a certificate showing the result of ~~his~~ the auditor's examination, and if ~~he~~ the auditor finds the petition to be insufficient ~~his~~ the certificate ~~shall~~ must show the reason for ~~such~~ the determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall ~~make an examination thereof~~ examine the amended petition, and if ~~his~~ the auditor's certificate shows ~~such~~ the amended petition to be insufficient, the petition ~~shall~~ must be returned to the person filing the ~~same~~ petition without prejudice to the filing of a new petition. If the auditor ~~shall find~~ finds the petition or the amended petition to be sufficient, ~~he~~ the auditor shall place the ~~same~~ petition with ~~his~~ the auditor's certificate before the governing body of the ~~municipality~~ city.

SECTION 7. AMENDMENT. Section 40-08-04 of the North Dakota Century Code is amended and reenacted as follows:

40-08-04. Election of ~~aldermen council members~~. In cities containing six hundred inhabitants or less, the ~~aldermen shall~~ council member must be elected at large. In all other cities operating under the council form of government, except in a city operating with ten ~~aldermen council members~~ and mayor, the ~~aldermen shall~~ council members must be elected by wards, and two ~~aldermen shall~~ council members must be elected from each ward. In cities operating under ten ~~aldermen council members~~ and mayor, one ~~alderman shall~~ council member must be elected from each of the seven wards and three ~~aldermen council members~~ and mayor ~~shall~~ must be elected at large.

SECTION 8. AMENDMENT. Section 40-08-04.1 of the North Dakota Century Code is amended and reenacted as follows:

40-08-04.1. Procedure when petition to change to ten ~~aldermen council members~~ and mayor is filed - Special election - Ballot. When a petition to change to ten ~~aldermen council members~~ and mayor, together with the city auditor's certificate of sufficiency, is filed with the governing body of a ~~municipality~~ city, the governing body shall call a special election at which only the question of changing to ten ~~aldermen council members~~ and mayor will be submitted. The date of ~~such~~ the election ~~shall~~ may not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election ~~shall~~ must be conducted, returns



~~thereof~~ made, and the result ~~thereof~~ declared in all respects as are other city elections. Notice of ~~such the~~ election ~~shall~~ must be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of ~~such the~~ election. The ballot to be used at the election provided for in this section ~~shall~~ must be in substantially the following form:

Shall the city of ----- change its organization and operate with ten ~~aldermen~~ council members and mayor?

Yes / /  
No / /

\* SECTION 9. AMENDMENT. Section 40-08-05 of the North Dakota Century Code is amended and reenacted as follows:

40-08-05. Qualifications of ~~aldermen~~ council members. ~~No A person shall be~~ is not eligible to the office of ~~alderman~~ council member if ~~he the~~ person:

1. Is not a qualified elector of and resident within the ward for which ~~he the person~~ was elected, except that in cities where ~~aldermen~~ council members are elected at large, ~~he shall~~ the person must be a qualified elector of and a resident within the city; or
2. Has been convicted of malfeasance, bribery, or other corrupt practice or crime.

SECTION 10. AMENDMENT. Section 40-08-06 of the North Dakota Century Code is amended and reenacted as follows:

40-08-06. Term of office of ~~aldermen~~ council members - Staggered terms provided for in cities where other than ten ~~aldermen~~ council members elected. ~~Aldermen Council members~~ shall hold office for four years and until their successors are elected and qualified. Terms of ~~aldermen shall~~ council members must be arranged so that only one-half of the ~~aldermen council~~ members in any city ~~shall be~~ are elected in any one election. When a city first adopts the council form of government, or when a city ~~which that~~ has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the ~~aldermen thereof as provided for in this section shall~~ council members must be perfected as follows: of the ~~aldermen council members~~ elected in each ward, the one receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the third Tuesday in April following the biennial election succeeding ~~his the member's~~ their election; if the city is not divided into wards, the one-half of the ~~aldermen council members~~ council members elected in the entire city receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one-half of the ~~aldermen council members~~ council members elected in the entire city receiving the lesser number of votes shall serve until the second Tuesday in April following the biennial election succeeding their election. Whenever, for any cause, more than one-half of the total number of ~~aldermen council members~~ council members in any ward, or more than one-half of the total number of ~~aldermen council members~~ council members in the city, if the city is not

\* NOTE: Section 40-08-05 was also amended by section 1 of House Bill No. 1375, chapter 445.

divided into wards, are to be elected in any one election, the length of the terms of the aldermen council members elected at such the election shall must be determined as provided in this section.

SECTION 11. AMENDMENT. Section 40-08-06.1 of the North Dakota Century Code is amended and reenacted as follows:

40-08-06.1. Terms of office under ten aldermen council members - Staggered terms provided for - Nominating petition requirements. When a city operating under the council form of government changes to the ten aldermen council members and mayor organization, the alternation of the terms of the aldermen thereof shall council members must be perfected as follows: the five aldermen council members receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election while the remaining five aldermen council members shall serve until the third Tuesday in April following the biennial election succeeding their election, and thereafter each alderman shall the council members must be elected to four-year terms and until their successors are elected and qualified. In cities electing ten aldermen council members, the candidates by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat. Upon approval of a change of organization to ten aldermen council members and mayor, all incumbent aldermen council members shall serve until the next biennial election at which time when the aldermen council seats shall must be filled; however. However, the mayor shall complete his the unexpired term for which elected.

SECTION 12. AMENDMENT. Section 40-08-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-07. Compensation of aldermen council members. Each alderman council member may receive compensation for services as established by ordinance, but the compensation shall may not exceed the following limitations based upon the population of the city according to the latest state or federal census:

1. In cities not exceeding two thousand in population, sixty dollars per month.
2. In cities over two thousand and not exceeding six thousand in population, one hundred dollars per month.
3. In cities over six thousand and not exceeding thirty thousand in population, one hundred ninety-five dollars per month.
4. In cities having a population of over thirty thousand, four hundred forty-five dollars per month.

SECTION 13. AMENDMENT. Section 40-08-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-08. Vacancies on council - How filled. If a vacancy occurs in the a city council office of alderman by death, resignation, or otherwise, the city council may call a special city election to fill such the vacancy for the unexpired term, or may, after fifteen days of the date of such the vacancy appoint a person from the ward in which the alderman council member previously holding was elected or appointed to fill such the vacancy until

the next city election, at which election the unexpired term shall must be filled. Upon petition of five percent of the qualified electors of such the ward, as determined by the total number of votes cast in such that ward in the last general election, the council shall call a special election to fill a vacancy occurring more than six months before the next city election, provided such if the petition has been submitted within fifteen days and before four p.m. of the fifteenth day of the date of such the vacancy or of the vacancy being filled by appointment. If the petition is mailed it must be in the possession of the council or its representative before four p.m. on the fifteenth day after the vacancy occurs or after the vacancy was filled by appointment.

SECTION 14. AMENDMENT. Section 40-09-05 of the North Dakota Century Code is amended and reenacted as follows:

40-09-05. President and board of commissioners succeed to powers and duties of mayor and council. If the city previously was organized under the council form of government, the first president and the other members of the first board of city commissioners elected after a city has incorporated under the city commission system of government shall be deemed are the successors of the mayor and aidermen council members of the city. Upon the qualification of the president and other members of the board, all the powers, rights, and duties of the mayor and council of the city shall cease. Whenever the city previously, under the decree or judgment of any court or under any law, ordinance, or resolution, has been entitled to representation through the mayor of the city and one or more of the aidermen thereof council members of the city, on the board of directors of any incorporated company in which the city may own stock or be interested, it shall must be represented on such the board of directors by the president of the board of city commissioners and by two other members of the board to be selected by the board.

SECTION 15. AMENDMENT. Section 40-14-01 of the North Dakota Century Code is amended and reenacted as follows:

40-14-01. Officers to be elected in council cities. The following officers shall must be elected in each city operating under the council form of government:

1. A mayor.
2. The aidermen council members required under the provisions of sections 40-08-03 and 40-08-04.

Each city operating under the council form of government may choose to have a municipal judge who shall be is elected.

SECTION 16. AMENDMENT. Section 40-14-02 of the North Dakota Century Code is amended and reenacted as follows:

40-14-02. Terms of elective officers. The terms of office of the mayor and aidermen shall be as council members are provided in chapter 40-08. All other elective officers in a city operating under the council form of government shall hold their respective offices for four years and until their successors are elected and qualified.

SECTION 17. AMENDMENT. Section 40-14-06 of the North Dakota Century Code is amended and reenacted as follows:

40-14-06. Officers commissioned by warrant - City auditor to receive certificate of appointment. All officers elected or appointed, except the city auditor, ~~aldermen council members~~, and mayor, ~~shall~~ must be commissioned by warrant signed by the auditor and the mayor or president of the city council. The mayor shall issue a certificate of appointment to the auditor.

SECTION 18. AMENDMENT. Section 40-21-03 of the North Dakota Century Code is amended and reenacted as follows:

40-21-03. Elections in council cities - Polling places - Polls open - Notice - Judges, clerks, and inspectors. Biennial municipal elections in cities operating under the council form of government ~~shall~~ must be held on the first Tuesday in April in each even-numbered year at such place or places as the city council ~~shall designate~~ designates. In cities where ~~aldermen council members~~ are elected at large, the council shall designate one polling place only. The polls ~~shall~~ must be opened and closed as provided by state law for the opening and closing of polls at primary, general, and special elections. Ten days' notice of the time and place of holding each election and of the offices to be filled ~~thereat~~ shall at the election must be given by the city auditor by publication in at least two newspapers published in ~~said~~ the city if two are published ~~therein~~ in the city. Publication in one ~~such~~ newspaper ~~shall be~~ is sufficient if only one newspaper is published in the city. For all general city elections the city council shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges and two clerks of election for each precinct at least ten days before the election is held. For special city elections the city council shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held. For any city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the city council may appoint one inspector, one clerk, and one judge.

SECTION 19. AMENDMENT. Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards. Each city operating under the council form of government in which ~~aldermen council members~~ are elected at large ~~shall constitute~~ constitutes an election district or voting precinct, and in all other cities each ward ~~shall constitute~~ constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate ~~such~~ those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of ~~such~~ the city into one precinct for voting purposes. An ordinance dividing or consolidating wards ~~shall~~ must be passed and ~~shall take~~ takes effect before the time of giving notice of the election. Wards and precincts established under ~~the provisions of~~ this section ~~shall~~ constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks ~~shall~~ must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" ~~shall~~ have the same

meaning except in the case where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. Nothing herein shall be construed as prohibiting This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of voting machines from separate wards therein in one building.

SECTION 20. AMENDMENT. Section 40-52-08 of the North Dakota Century Code is amended and reenacted as follows:

40-52-08. Alderman Council member changing wards can continue in office. An alderman A council member who was duly elected, but because of the change in boundaries of the ward no longer resides within the ward from which he the member was elected, but is still residing within the city limits, can continue in office for the term for which he the member was elected and until a successor is duly elected and qualified for such the ward.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 441

HOUSE BILL NO. 1351  
(Whalen, Thompson)

### CITY COUNCIL MEETING DAYS

AN ACT to amend and reenact section 40-04.1-05 of the North Dakota Century Code, relating to the regular meeting day of a city council operating under the modern council form of government; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-04.1-05. Meetings - Regular, special, and for organization. The city council shall hold its regular meetings on the first Monday of each and every at least once a month, on or before the fifteenth day of the month, and may prescribe by ordinance the manner in which special meetings may be called. The city council shall establish by resolution or ordinance the date of its regular meetings. The first meeting for the organization of the city council ~~shall~~ must be held on the third Tuesday in April of each even-numbered year.

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

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 442

SENATE BILL NO. 2023  
(Legislative Council)  
(Advisory Commission on Intergovernmental Relations)

**LOCAL ELECTION CONSOLIDATION**

AN ACT to create and enact a new subdivision to subsection 2 of section 16.1-01-01 of the North Dakota Century Code, relating to duties of the secretary of state; to amend and reenact sections 23-04-01, 40-04.1-05, 40-05.1-04, 40-08-06, 40-08-06.1, 40-08-10, 40-09-04, 40-10-02, 40-13-02, 40-14-03, 40-14-05, 40-15-03, 40-15-06, 40-21-02, 40-21-03, and 40-33-02 of the North Dakota Century Code, relating to city elections; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 16.1-01-01 of the North Dakota Century Code is created and enacted as follows:

Prescribe the order in which each political subdivision will appear on a primary election ballot.

SECTION 2. AMENDMENT. Section 23-04-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-04-01. Board of health in council cities. The board of health in a city operating under the council form of government is under the supervision of the state department of health and consolidated laboratories and ~~shall consist~~ consists of the following members:

1. Four ~~aldermen~~ council members appointed by the mayor at the first meeting of the city council in ~~April~~ June of each year.
2. The city engineer.
3. The city health officer.

SECTION 3. AMENDMENT. Section 40-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-04.1-05. Meetings - Regular, special, and for organization. The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for the organization of the city council shall be held on the ~~third~~ fourth Tuesday in ~~April~~ June of each even-numbered year.

SECTION 4. AMENDMENT. Section 40-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-04. Submission of charter to electors. Not earlier than sixty days nor later than six months after such publication or distribution, the proposed charter shall must be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any primary or general statewide election that is to be held within such period of that time, or at a special city election held concurrently with any primary or general statewide election.

SECTION 5. AMENDMENT. Section 40-08-06 of the North Dakota Century Code is amended and reenacted as follows:

40-08-06. Term of office of aldermen council members - Staggered terms provided for in cities where other than ten aldermen council members elected. Aldermen Council members shall hold office for four years and until their successors are elected and qualified. Terms of aldermen shall council members must be arranged so that only one-half of the aldermen council members in any city shall be are elected in any one election. When a city first adopts the council form of government, or when a city which has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the aldermen thereof as provided for in this section shall council members must be perfected as follows: of the aldermen council members elected in each ward, the one receiving the greater number of votes shall serve until the third fourth Tuesday in April June following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the third fourth Tuesday in April June following the biennial election succeeding his that council member's election; if the city is not divided into wards, the one-half of the aldermen council members elected in the entire city receiving the greater number of votes shall serve until the third fourth Tuesday in April June following the second succeeding biennial election and the one-half of the aldermen council members elected in the entire city receiving the lesser number of votes shall serve until the second fourth Tuesday in April June following the biennial election succeeding their election.

Whenever, for any cause, more than one-half of the total number of aldermen council members in any ward, or more than one-half of the total number of aldermen council members in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the aldermen council members elected at such that election shall must be determined as provided in this section.

SECTION 6. AMENDMENT. Section 40-08-06.1 of the North Dakota Century Code is amended and reenacted as follows:

40-08-06.1. Terms of office under ten aldermen council members - Staggered terms provided for - Nominating petition requirements. When a city operating under the council form of government changes to the ten aldermen council members and mayor organization, the alternation of the terms of the aldermen thereof shall council members must be perfected as follows: the five aldermen council members receiving the greater number of votes shall serve until the third fourth Tuesday in April June following the second succeeding biennial election while the remaining five aldermen council members shall serve until the third fourth Tuesday in April June following the biennial election succeeding their election, and thereafter each alderman shall council member must be elected to four-year terms and until their successors are elected and qualified. In cities electing ten aldermen



council members, the candidates by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat. Upon approval of a change of organization to ten aldermen council members and mayor, all incumbent aldermen council members shall serve until the next biennial election at which time when the aldermen council seats shall be are filled; ~~however, the~~. The mayor shall complete his the unexpired term for which the mayor was elected.

SECTION 7. AMENDMENT. Section 40-08-10 of the North Dakota Century Code is amended and reenacted as follows:

40-08-10. Meetings of council - Regular, special, and for organization. The city council shall hold its regular meetings at least once a month on or before the fifteenth day of the month on a date certain established by resolution or ordinance of the council, and may prescribe by ordinance the manner in which special meetings may be called as well as the establishment of any additional regular meetings desired. If a regular meeting falls upon a holiday, ~~such the meeting shall~~ must be held upon the next business day with the same effect as if conducted upon the day appointed. All regular and special meetings ~~shall~~ must be held at a time and place to be designated by the city council. The first meeting for the organization of the city council ~~shall~~ must be held on the third fourth Tuesday in ~~April~~ June of each even-numbered year.

SECTION 8. AMENDMENT. Section 40-09-04 of the North Dakota Century Code is amended and reenacted as follows:

40-09-04. Commissioners - Terms of office - Terms of members of first board - Resignations. Each commissioner and the president of the board of city commissioners shall hold office for four years ~~from and~~ after the date of his election and until his a successor ~~shall have~~ has been duly elected and qualified, except that when the first board of city commissioners is elected, the president of the board and the two commissioners receiving the highest number of votes shall hold office until the third fourth Tuesday in ~~April~~ June following the second biennial city election thereafter and the others until the third fourth Tuesday in ~~April~~ June following the first biennial city election thereafter. The president or any other member of the board may resign his the office by filing his a written resignation with the city auditor, who shall lay the resignation before the board of city commissioners at its next regular meeting or at a special meeting called for consideration of ~~such the~~ resignation. The resignation ~~shall become~~ is effective upon its acceptance by the board.

SECTION 9. AMENDMENT. Section 40-10-02 of the North Dakota Century Code is amended and reenacted as follows:

40-10-02. Vote required to adopt plan - When plan effective after adoption. If four-sevenths of the vote cast at the election favor the adoption of the city manager plan, the governing body shall declare the plan adopted, and shall fix the date when the ~~same shall go into effect. Such~~ plan becomes effective. That date shall must be after the first regular meeting of the governing body in the month of May July following the election.

SECTION 10. AMENDMENT. Section 40-13-02 of the North Dakota Century Code is amended and reenacted as follows:

40-13-02. Bonds of ~~municipal~~ city officials - Requirements - Approvals - Additional bonds. The auditor, municipal judge, and assessor of each municipality, and the city manager of any city, and such other officers as the governing body may direct, before entering upon the discharge of the duties of their respective offices, shall execute and deliver to the ~~municipality~~ city their separate bonds payable to the ~~municipality~~ city, conditioned for the honest and faithful performance of their official duties. ~~Such~~ The bond ~~shall~~ must be in an amount fixed by the governing body of the ~~municipality~~ city. The bond of the auditor ~~shall~~ must be set by resolution of the governing body of the ~~municipality~~ city at a regular meeting in ~~April~~ June of each year in an amount at least equal to twenty-five percent of the average amount of money that has been subject to the auditor's control during the preceding fiscal year, as determined by the total of the daily balances of the auditor for the calendar year divided by the figure three hundred or the sum of two hundred fifty thousand dollars whichever is least. All official bonds ~~shall~~ must be approved by the executive officer of the ~~municipality~~ city and filed in the office of the city auditor. ~~Such~~ The bonds ~~shall~~ must conform to the provisions of law applicable to the bonds of state officers and employees except that no personal surety ~~shall~~ may be accepted on any bond. ~~No municipality shall~~ A city may not pay the premium on any bond except a bond written in the state bonding fund or a bond procured to replace a bond canceled by the state bonding fund. The governing body at any time may require new and additional bonds of any officer.

SECTION 11. AMENDMENT. Section 40-14-03 of the North Dakota Century Code is amended and reenacted as follows:

40-14-03. When term of elective officers begins. Under the city council form of government the term of each elective officer ~~shall commence~~ commences on the ~~third~~ ~~fourth~~ Tuesday of ~~April~~ June of the year in which ~~he~~ the officer is elected.

SECTION 12. AMENDMENT. Section 40-14-05 of the North Dakota Century Code is amended and reenacted as follows:

40-14-05. Term of appointive officers. The term of all appointive officers of a city operating under the council form of government ~~shall commence~~ commences on the first day of ~~May~~ July succeeding their appointment unless otherwise provided by ordinance, and ~~such~~ the officers shall hold their respective offices for two years, and until their successors are appointed and qualified.

SECTION 13. AMENDMENT. Section 40-15-03 of the North Dakota Century Code is amended and reenacted as follows:

40-15-03. When term of elective officers begins. The term of each elective officer in a city operating under the commission system of government ~~shall commence~~ commences on the ~~third~~ ~~fourth~~ Tuesday in ~~April~~ June of the year in which ~~he~~ the officer is elected.

SECTION 14. AMENDMENT. Section 40-15-06 of the North Dakota Century Code is amended and reenacted as follows:

40-15-06. Term of appointive officers. The terms of all appointive officers of a city operating under the commission system of government ~~shall commence~~ commences on the first day of ~~May~~ July succeeding their appointment unless otherwise provided by ordinance, and ~~such~~ the officers shall hold

their respective offices for ~~such the term as has been~~ provided by ordinance, and until their respective successors are qualified.

SECTION 15. AMENDMENT. Section 40-21-02 of the North Dakota Century Code is amended and reenacted as follows:

40-21-02. Elections in commission cities - When held - Notice - Polls - ~~Agreements with counties~~ - Judges and inspectors. Biennial municipal elections in cities operating under the commission system of government ~~shall~~ must be held on the ~~first second~~ Tuesday in ~~April June~~ in each even-numbered year at such place or places as the board of city commissioners shall designate. Ten days' notice of the time and place of the election and of the offices to be filled at such election ~~shall~~ must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general, and special elections. For all general city elections, the board of city commissioners shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges of election for each precinct at least ten days before the election is held. The board of city commissioners shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of election expenses. For special city elections the board of city commissioners shall appoint one inspector and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For any a special city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the board of city commissioners may appoint one inspector and one judge. Each precinct election judge, in either a general or a special city election, shall appoint a poll clerk who ~~shall be~~ is a qualified elector of the precinct in which he the poll clerk is to serve.

SECTION 16. AMENDMENT. Section 40-21-03 of the North Dakota Century Code is amended and reenacted as follows:

40-21-03. Elections in council cities - Polling places - Polls open - Notice - Judges, clerks, and inspectors - ~~Agreements with counties~~. Biennial municipal elections in cities operating under the council form of government ~~shall~~ must be held on the ~~first second~~ Tuesday in ~~April June~~ in each even-numbered year at such place or places as the city council shall designate. In cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be opened and closed as provided by state law for the opening and closing of polls at primary, general, and special elections. Ten days' notice of the time and place of holding each election and of the offices to be filled ~~thereat~~ shall must be given by the city auditor by publication in at least two newspapers published in ~~said the city~~ if two are published ~~therein~~ in the city. Publication in one such newspaper ~~shall be~~ is sufficient if only one newspaper is published in the city. For all general city elections the city council shall appoint one inspector for each precinct at least twenty-one days before the election is held, and two judges and two clerks of election for each precinct at least ten days before the election is held. The city council shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, and the apportioning of

election expenses. For special city elections the city council shall appoint one inspector, two clerks, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. For ~~any~~ a special city election in a precinct in which seventy-five or fewer votes were cast in the last city election, the city council may appoint one inspector, one clerk, and one judge.

SECTION 17. AMENDMENT. Section 40-33-02 of the North Dakota Century Code is amended and reenacted as follows:

40-33-02. Acquiring, erecting, or improving plant, system, or line without election prohibited - Exception. No municipal officers ~~shall~~ may purchase, erect, ~~nor~~ substantially enlarge, improve, or extend an existing plant, ~~nor~~ or lease from others any plant, system, or line provided for in section 40-33-01, unless the proposition ~~shall have~~ has been submitted by a resolution of the governing body to the qualified electors of the ~~municipality city~~ at ~~an annual~~ biennial or special election called, held, and conducted upon the notice and in the manner specified by this title for the election of the governing body of the ~~municipality city~~, and ~~shall have~~ has been approved by a majority of the electors voting thereon. If, ~~however~~, the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty per centum or more of the cost of any waterworks, mains, water system and equipment or appliances therefor is to be paid by special assessments or by the earnings of the plant or by both it ~~shall be unnecessary to submit~~, the governing body is not required to submit the proposition to the electors of the ~~municipality, or in order city~~. If the ~~improvement and facilities~~ are to provide for a greater and more adequate water supply to meet the needs of the ~~municipality city~~ for domestic use, for fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without an election, ~~provided~~ if funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined by section 40-33-10.

SECTION 18. EFFECTIVE DATE. This Act becomes effective on January 1, 1994.

Approved April 11, 1991  
 Filed April 12, 1991

## CHAPTER 443

SENATE BILL NO. 2526  
(Evanson, Lindgren)

### CITY ENVIRONMENTAL REGULATIONS

AN ACT to amend and reenact subsection 3 of section 40-05-06 of the North Dakota Century Code, relating to the penalty for the violation of city ordinances enforcing United States environmental protection agency regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 40-05-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. For every violation of a city ordinance enforcing the requirements of 40 CFR 403 relating to publicly owned treatment works, or prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 444

HOUSE BILL NO. 1083  
(Freier)

## ALDERMEN NUMBER

AN ACT to amend and reenact section 40-08-03 of the North Dakota Century Code, relating to the number of aldermen on a city council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 40-08-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-03. Number of aldermen determined by population - Census to govern. The number of aldermen shall be as follows:

1. In cities of two hundred inhabitants or less, four, except that the city council may by resolution duly adopted reduce the number of aldermen to two.
2. In cities of more than two hundred but not more than six hundred inhabitants, four.
3. In cities of more than six hundred but not more than ~~two~~ ten thousand ~~inhabitants, six.~~
4. ~~In cities of more than two thousand but not more than four thousand inhabitants, eight.~~
5. ~~In cities of more than four thousand but not more than ten thousand inhabitants, twelve.~~
6. ~~In cities of more than ten thousand inhabitants, fourteen inhabitants, four, six, eight, ten, or twelve, as provided by city ordinance.~~
4. In cities of more than ten thousand inhabitants, fourteen.
- 7- 5. Cities of ten thousand or more inhabitants which have been incorporated and operating under the council form of government may change to a ten aldermen and mayor organization upon approval by a majority vote at a special election called pursuant to the procedure hereinafter provided.

Whenever a census of the city shall show a population requiring more aldermen than are in the council at the time of taking such census, the city council shall not be required to make a change in the number of aldermen and the corresponding change in the number of wards of such city unless a majority of the qualified electors thereof, to be determined by the number of names on the poll list of the last city election, petition therefor.

Approved April 8, 1991  
Filed April 8, 1991

\* NOTE: Section 40-08-03 was also amended by section 4 of Senate Bill No. 2295, chapter 440.

## CHAPTER 445

HOUSE BILL NO. 1375  
(Kretschmar)

**ALDERMEN AND COUNCIL MEMBER ELECTION**

AN ACT to create and enact a new section to chapter 40-08 of the North Dakota Century Code, relating to the election of council members in council cities; and to amend and reenact section 40-08-05 of the North Dakota Century Code, relating to qualifications of aldermen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 40-08-05 of the North Dakota Century Code is amended and reenacted as follows:

40-08-05. Qualifications of aldermen. ~~No person shall be~~ A person is not eligible to the office of alderman if ~~he~~ the person:

1. Is not a qualified elector of and resident within the ward for which ~~he~~ the person was elected, except that in cities where aldermen are elected at large and not required to be a resident of the ward for which the person is elected pursuant to section 2 of this Act, ~~he shall~~ the person must be a qualified elector of and a resident within the city; or
2. Has been convicted of malfeasance, bribery, or other corrupt practice or crime.

SECTION 2. A new section to chapter 40-08 of the North Dakota Century Code is created and enacted as follows:

Election at large of council members from wards - Option. Notwithstanding any other provision of law, the governing body of a city having a population not exceeding five thousand and which is operating under the council form of government may provide by ordinance for the election of all council members at large. If the council members are elected at large pursuant to this section, the governing body of the city may establish wards in accordance with section 40-08-04 and require that the council members elected from each ward must be residents of the ward.

Approved April 8, 1991  
Filed April 8, 1991

\* NOTE: Section 40-08-05 was also amended by section 9 of Senate Bill No. 2295, chapter 440.

## CHAPTER 446

HOUSE BILL NO. 1226  
(Representatives Wald, Kretschmar)  
(Senator Maxson)

### ALCOHOL-RELATED OFFENSE JURISDICTION

AN ACT to create and enact a new subsection to section 40-18-01 of the North Dakota Century Code, relating to the jurisdiction of municipal courts to try alcohol-related traffic offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 40-18-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, a municipal court in which the judge is not a person licensed to practice law in this state has no jurisdiction to hear, try, and determine an offense that would be a violation of section 39-08-01 or equivalent ordinance.

Approved March 19, 1991  
Filed March 19, 1991



## CHAPTER 447

HOUSE BILL NO. 1534  
(Schneider, Williams)

### INDUSTRY TAX EXEMPTIONS

AN ACT to amend and reenact sections 40-57.1-01, 40-57.1-02, 40-57.1-03, 40-57.1-04, 40-57.1-04.1, 40-57.1-04.3, 40-57.1-05, 40-57.1-06, and 40-57.1-07 of the North Dakota Century Code, relating to tax exemptions for new and expanding industries; and to repeal section 40-57.1-04.2 of the North Dakota Century Code, relating to the definition of a local development corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.1-01 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-01. Declaration and finding of public purpose. The legislative assembly of the state of North Dakota hereby declares and finds that it is and has been its purpose in preparing and adopting the provisions of this chapter to sanction, authorize, and encourage activities in the public interest and for the welfare of the state of North Dakota, its subdivisions and people by assisting in the establishment of additional industrial plants, the expansion and retention of existing business, and promotion of economic activities within the state, and thereby increasing production of wealth, and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

It is the intent of the legislative assembly that political subdivisions and the state board of equalization in their determination of whether the tax exemptions authorized by this chapter shall be granted, shall give due weight to their impact and effect upon existing industry and business to the end that an unfair advantage shall not be given to new or expanded enterprises which is to the substantial detriment of existing enterprises.

SECTION 2. AMENDMENT. Section 40-57.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-02. "Project" and "municipality" defined Definitions. As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" includes counties as well as municipalities of the types listed in subsection 4 of section 40-01-01; and the term "project" means any real property, buildings and improvements on real property or the buildings thereon, and any equipment permanently located on such real property or in such buildings, which are used or useful in connection with revenue producing enterprises, or any combination of two or more such enterprises:

1. "Local development corporation", as used in section 40-57.1-04.3, means a profit or nonprofit corporation incorporated under the laws of this state, formed for the purpose of furthering the economic development of its community and environs, with authority to promote and assist the growth and development of business concerns in the areas covered by its operations. The operations of the corporation must be limited to a specified area in this state. The controlling interest in the corporation must be held by at least twenty-five persons residing or doing business in the community or its environs. These persons must control not less than seventy-five percent of the voting control of the corporation. No shareholder or member of the corporation may own in excess of twenty-five percent of the voting control in the corporation if that shareholder or member has a direct pecuniary interest in any project or business concern which will occupy the property of the corporation. The primary objective of the corporation must be to benefit the community through increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders or members. Any monetary profits or other benefits going to the shareholders or members must be merely incidental to the primary objective of the corporation.
2. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01.
3. "Primary sector business" means an individual, corporation, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth.
4. "Project" means any revenue-producing enterprise, or any combination of two or more of these enterprises. For the purpose of the income tax exemption, "project" means both "primary sector business" and "tourism" as defined by this section.
5. "Tourism" means all tourism-related businesses and activities including recreation, historical and cultural events, guide services, and unique lodging and food services which serve as destination attractions.

SECTION 3. AMENDMENT. Section 40-57.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipalities' authority to grant tax exemption - Notice to competitors - Limitations. Municipalities are hereby authorized and empowered, in their discretion, as limited hereafter, to grant, after negotiation with a potential project operator, partial or complete exemption from ad valorem taxation on all tangible property used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. ~~Provided, however, that the A~~ municipality may also grant a partial exemption from ad valorem taxation on tangible property used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities grown in this state of up to one hundred percent in the sixth year from the date of commencement of project operations, eighty percent in the seventh year from the date of commencement of project operations, sixty percent in the eighth year from the date of commencement of project operations, forty percent in

the ninth year from the date of commencement of project operations, and twenty percent in the tenth year from the date of commencement of project operations. An exemption granted under this chapter applies only to the valuation over and above the taxable valuation placed upon buildings, structures, and improvements on the property for the last assessment period immediately preceding the date of application for exemption. Negotiations with potential project operators for tax exemption must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if such project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. The potential project operator shall publish two notices, the form of which must be prescribed by the tax commissioner, to competitors of the application for tax exemption in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption is in the best interest of the municipality, and if it so determines, shall give its approval.

SECTION 4. AMENDMENT. Section 40-57.1-04 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04. Exemption from income tax - Notice to competitors - Limitations. The Upon application by a project operator to the state board of equalization, the net income of any a project granted an exemption from ad valorem taxation may be exempt from state income tax for a like period, provided not exceeding five years from commencement of project operations. The application for the exemption is made must be reviewed as to the eligibility of the project by the municipality on behalf of the project department of economic development and finance and its recommendations forwarded to the state board of equalization, and the. The project operator shall provide notice to competitors in the manner prescribed by the state board of equalization. The board, after full investigation, determines shall determine whether the granting of the exemption is in the best interest of the people of North Dakota and approves, if it so determines, approve the exemption. The board shall, after making its determination, certify the findings back to the applicant and to the tax commissioner. Nothing contained herein shall have the effect of exempting the project from filing an annual income tax return.

SECTION 5. AMENDMENT. Section 40-57.1-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure. No structure qualifies for this exemption unless it has been vacant for at least the twelve months prior to the commencement of project operations, except that in cities with a population of three thousand or less the vacancy period does not apply and the project operator may occupy the structure immediately after it is vacated

by the previous occupant. Notwithstanding the vacancy requirement, for For taxable years beginning after December 31, 1988, the governing body of a municipality may grant additional exemptions of property under this section during a period not exceeding ten years from the date of commencement of project operations in the structure if the structure is owned by the United States, the state, or a political subdivision of the state and leased to the project operator. The project operator shall apply to the governing body of the municipality annually for the exemption and the governing body of the municipality may grant the exemption for only one year at a time.

SECTION 6. AMENDMENT. Section 40-57.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04.3. Property tax exemption on speculative industrial buildings and properties owned by a local development corporation. A municipality may, in its discretion, grant partial or complete exemption from ad valorem taxation on buildings, structures, and improvements constructed and owned by a local development corporation for the express purpose of attracting new industry to this state. This exemption from ad valorem taxation is only available on new buildings, structures, and improvements while they remain unoccupied. Once the building, structure, or improvement is occupied, the exemption continues until the next annual assessment date following the first occupancy. This section does not affect the eligibility for property and income tax exemption of a new business or industry available under other provisions of this chapter, provided application for those the tax exemptions exemption is made prior to occupancy. A written request for the exemption is to be filed by the local development corporation with the municipality. The request will be reviewed at an official meeting of the governing body and will be placed on the agenda for final action at the next official meeting. The governing body of the municipality shall notify the county director of tax equalization with respect to any exemption granted under this section.

SECTION 7. AMENDMENT. Section 40-57.1-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-05. Reapplication for tax exemption - Discretion of board of equalization. The municipality or the state board of equalization, in its discretion, upon the presentation of additional facts and circumstances which were not presented or discovered at the time of the original application for tax exemption under the provisions of this chapter, accept reapplications from project operators at any time if the project operators first publish notice of application for tax exemption as required by this chapter.

SECTION 8. AMENDMENT. Section 40-57.1-06 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-06. Change in value, new location, or change in project operator or use requiring reapplication for tax exemption. If at any time the value of the property exempted from taxation under the provisions of this chapter exceeds the original valuation by more than ten percent, the project operator must reapply in order to receive an exemption on the added value of such the property. If he the project operator does not reapply, or if his the reapplication is disapproved, the increased valuation will be subject to ad valorem taxation. If at any time a project operator who is exempt from taxation under this chapter moves the business to a new location within this state, such the project operator must either reapply to retain the remaining

balance of the property tax exemption or he may elect to make application as a new business; but ~~such the~~ move shall have no effect on the income tax exemption of ~~such the~~ project operator if it is shown by the project operator to the satisfaction of the state board of equalization that the nature of the business has not been changed by ~~such the~~ move and that the effect of the business upon competitors has not been changed by ~~such the~~ move. In addition, the property tax exemption provided by this chapter shall apply only to the project operator to which it is granted and shall be valid only so long as the property is used for the purposes stated in the application. If there is a change in use of the property, or if a new project operator takes possession of the property, the property tax exemption shall terminate and the project operator must file a new application with the municipality if ~~he the~~ project operator wishes consideration for a tax exemption for the remainder of the exemption period provided pursuant to section 40-57.1-03.

SECTION 9. AMENDMENT. Section 40-57.1-07 of the North Dakota Century Code is amended and reenacted as follows:

40-57.1-07. Exemptions - Time for making application.

1. No property tax exemption shall be granted under this chapter unless the application for it is granted as provided in this chapter prior to the commencement of construction of the project as that term is defined in section 40-57.1-02 or prior to occupancy by the project operator if the project is an existing building.
2. Application for an income tax exemption as provided in this chapter must be made by the project operator no later than one year after the commencement of project operations.

SECTION 10. REPEAL. Section 40-57.1-04.2 of the North Dakota Century Code is repealed.

Approved April 16, 1991  
Filed April 18, 1991

# UNIFORM COMMERCIAL CODE

## CHAPTER 448

SENATE BILL NO. 2100

(Committee on Industry, Business and Labor)

(At the request of the Commission on Uniform State Laws)

### UNIFORM COMMERCIAL CODE REVISIONS

AN ACT to create and enact a new section to chapter 39-05 and new chapters 41-02.1, 41-03, 41-04, and 41-04.1 of the North Dakota Century Code, relating to the Uniform Commercial Code, article 2A - leases, article 3 - negotiable instruments, article 4 - bank deposits and collections, and article 4A - funds transfers; to amend and reenact subsection 3 of section 6-07-52, subsection 2 of section 41-01-05, subsections 20, 24, 37, 43, and 44 of section 41-01-11, section 41-01-17, subsection 3 of section 41-02-03, subsection 4 of section 41-02-48, subsection 3 of section 41-02-59, subsection 3 of section 41-05-03, subdivision a of subsection 2 of section 41-05-14, subsection 3 of section 41-09-05, section 41-09-13, subsection 1 of section 41-09-16, subdivision f of subsection 1 of section 41-09-23, section 41-09-30, subsection 1 of section 41-09-33, and section 47-15-01 of the North Dakota Century Code, relating to the Uniform Commercial Code; to repeal the present chapters 41-03 and 41-04 and section 41-09-11 of the North Dakota Century Code, relating to negotiable instruments and bank deposits and collections; to provide for transition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 6-07-52 of the North Dakota Century Code is amended and reenacted as follows:

3. Claims of depositors, except that notwithstanding sections 6-03-67 and ~~41-04-27~~ 41-04-31, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to setoff against the depositor's account;

SECTION 2. A new section to chapter 39-05 is created and enacted as follows:

Vehicle leases that are not sales or security interests. Notwithstanding any other provision of law, a transaction regarding motor vehicles or trailers does not create a sale or security interest merely because an agreement provides that the rental price may be adjusted by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

SECTION 3. AMENDMENT. Subsection 2 of section 41-01-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is

effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

- a. Rights of creditors against sold goods. Section 41-02-47.
- b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
- c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
- ~~Bulk transfers subject to the chapter on bulk transfers. Section 41-06-02.~~
- d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
- e. Applicability of the chapter on investment securities. Section 41-08-06.
- f. Perfection provisions of the chapter on secured transactions. Section 41-09-03.

SECTION 4. AMENDMENT. Subsections 20, 24, 37, 43, and 44 of section 41-01-11 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 20. "Holder" means a person who is in possession of a document of title, an instrument, or a certificated investment security drawn, issued, or endorsed to him, to his order, to bearer, or in blank with respect to an instrument, certificated security, or document of title means the person in possession if, in the case of an instrument, it is payable to bearer or to the order of the person in possession; in the case of a security, the person in possession is the registered owner, the security has been endorsed to the person in possession by the registered owner, or the security is in bearer form; or, in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession.
- 24. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency or by an intergovernmental organization.
- 37. a. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 41-02-46) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to chapter 41-09. The special property interest of a buyer of goods on identification of such those goods to a contract for sale under section 41-02-46 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 41-09. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment is in any event subject to the provisions on

consignment sales (section 41-02-43). Whether a transaction creates a lease is intended as or security interest is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security; and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and (1) the original term of the lease is equal to or greater than the remaining economic life of the goods; (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or (4) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

- b. A transaction does not create a security interest merely because it provides that (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into; (2) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, reporting, or registration fees, or service or maintenance costs with respect to the goods; (3) the lessee has an option to renew the lease or to become the owner of the goods; (4) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or (5) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
- c. For purposes of this subsection: Additional consideration is not nominal if when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into. "Present value"



means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

43. "Unauthorized" signature **or endorsement** means one made without actual, implied or apparent authority and includes a forgery.
44. "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections ~~41-03-33~~ 41-03-29, ~~41-04-18~~ 41-04-22, and ~~41-04-19~~ 41-04-23) a person gives "value" for rights if he acquires them:
- In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge back is provided for in the event of difficulties in collection;
  - As security for or in total or partial satisfaction of a preexisting claim;
  - By accepting delivery pursuant to a preexisting contract for purchase; or
  - Generally, in return for any consideration sufficient to support a simple contract.

SECTION 5. AMENDMENT. Section 41-01-17 of the North Dakota Century Code is amended and reenacted as follows:

41-01-17. (1-207) Performance or acceptance under reservation of rights.

1. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.
2. Subsection 1 does not apply to an accord and satisfaction governed by section 41-03-37.

SECTION 6. AMENDMENT. Subsection 3 of section 41-02-03 of the North Dakota Century Code is amended and reenacted as follows:

- The following definitions in other chapters apply to this chapter:
  - a. "Check". Section 41-03-04.
  - b. "Consignee". Section 41-07-02.
  - c. "Consignor". Section 41-07-02.

- d. "Consumer goods". Section 41-09-09.
- e. "Dishonor". Section ~~41-03-63~~ 41-03-59.
- f. "Draft". Section 41-03-04.

SECTION 7. AMENDMENT. Subsection 4 of section 41-02-48 of the North Dakota Century Code is amended and reenacted as follows:

- 4. The rights of other purchasers of goods and of lien creditors are governed by the chapters on secured transactions (chapter 41-09), ~~bulk transfers (chapter 41-06)~~, and documents of title (chapter 41-07).

SECTION 8. AMENDMENT. Subsection 3 of section 41-02-59 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Subject to the provisions of this title on the effect of an instrument on an obligation (section ~~41-03-76~~ 41-03-36), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

SECTION 9. Chapter 41-02.1 of the North Dakota Century Code is created and enacted as follows:

41-02.1-01. (2A-101) Short title. This chapter may be cited as the Uniform Commercial Code - leases.

41-02.1-02. (2A-102) Scope. This chapter applies to any transaction, regardless of form, that creates a lease.

41-02.1-03. (2A-103) Definitions and index of definitions.

1. In this chapter unless the context otherwise requires:

- a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- b. "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
- c. "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any

- other unit treated in use or in the relevant market as a single whole.
- d. "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.
- e. "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.
- f. "Fault" means wrongful act, omission, breach, or default.
- g. "Finance lease" means a lease in which (1) the lessor does not select, manufacture, or supply the goods; (2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and (3)(a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract; (b) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract; (c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of any third party such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or (d) only if the lease is not a consumer lease, before the lessee signs the lease contract the lessor informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and that the lessee may contact the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- h. "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 41-02.1-39), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

- i. "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- j. "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- k. "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance (as provided in this chapter). Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- l. "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
- m. "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
- n. "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- o. "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- p. "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- q. "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- r. "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

- s. "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, regardless of whether it is sufficient to perform the lease contract.
  - t. "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
  - u. "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
  - v. "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
  - w. "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
  - x. "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
  - y. "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
  - z. "Termination" occurs when either party under a power created by agreement or law puts an end to the lease contract otherwise than for default.
2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Accessions". Subsection 1 of section 41-02.1-40.
  - b. "Construction mortgage". Subdivision d of subsection 1 of section 41-02.1-39.
  - c. "Encumbrance". Subdivision e of subsection 1 of section 41-02.1-39.
  - d. "Fixtures". Subdivision a of subsection 1 of section 41-02.1-39.
  - e. "Fixture filing". Subdivision b of subsection 1 of section 41-02.1-39.
  - f. "Purchase money lease". Subdivision c of subsection 1 of section 41-02.1-39.
3. The following definitions also apply to this chapter:

- a. "Account". Section 41-09-06.
  - b. "Between merchants". Subsection 1 of section 41-02-04.
  - c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.
  - d. "Chattel paper". Subdivision b of subsection 1 of section 41-09-05.
  - e. "Consumer goods". Subsection 1 of section 41-09-09.
  - f. "Document". Subdivision f of subsection 1 of section 41-09-05.
  - g. "Entrusting". Subsection 3 of section 41-02-48.
  - h. "General intangibles". Section 41-09-06.
  - i. "Good faith". Subdivision b of subsection 1 of section 41-02-03.
  - j. "Instrument". Subdivision i of subsection 1 of section 41-09-05.
  - k. "Merchant". Subsection 3 of section 41-02-04.
  - l. "Mortgage". Subdivision j of subsection 1 of section 41-09-05.
  - m. "Pursuant to commitment". Subdivision k of subsection 1 of section 41-09-05.
  - n. "Receipt". Subdivision c of subsection 1 of section 41-02-03.
  - o. "Sale". Subdivision d of subsection 1 of section 41-02-06.
  - p. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.
  - q. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.
  - r. "Seller". Subdivision d of subsection 1 of section 41-02-03.
4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.
- 41-02.1-04. (2A-104) Leases subject to other laws.
- 1. A lease, although subject to this chapter, is also subject to any applicable:
    - a. Certificate of title statute of this state;
    - b. Certificate of title statute of another jurisdiction (section 41-02.1-05); or

- c. Consumer protection law of this state, both decisional and statutory.
2. In case of conflict between the provisions of this chapter, other than section 41-02.1-05 or subsection 3 of section 41-02.1-34 or subsection 3 of section 41-02.1-35, and any statute or decision referred to in subsection 1, the provisions of that statute control.
  3. Failure to comply with any applicable law has only the effect specified therein.

41-02.1-05. (2A-105) Territorial application of article to goods covered by certificate of title. Subject to subsection 3 of section 41-02.1-34 and subsection 3 of section 41-02.1-35, with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until the earlier of surrender of the certificate or four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

41-02.1-06. (2A-106) Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

1. If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty days thereafter or in which the goods are to be used, the choice is not enforceable.
2. If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

41-02.1-07. (2A-107) Waiver or renunciation of claim or right after default. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

41-02.1-08. (2A-108) Unconscionability.

1. If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
2. With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

3. Before making a finding of unconscionability under subsection 1 or 2, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.
4. In an action in which the lessee claims unconscionability with respect to a consumer lease:
  - a. If the court finds unconscionability under subsection 1 or 2, the court shall award reasonable attorney's fees to the lessee.
  - b. If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action the claimant knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.
  - c. In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections 1 and 2 is not controlling.

41-02.1-09. (2A-109) Option to accelerate at will.

1. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he or she deems himself or herself insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.
2. With respect to a consumer lease, the burden of establishing good faith under subsection 1 is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

41-02.1-10. (2A-201) Statute of frauds.

1. A lease contract is not enforceable by way of action or defense unless:
  - a. The total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or
  - b. There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.
2. Any description of leased goods or of the lease term is sufficient and satisfies subdivision b of subsection 1, whether or not it is specific, if it reasonably identifies what is described.



3. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subdivision b of subsection 1 beyond the lease term and the quantity of goods shown in the writing.
4. A lease contract that does not satisfy the requirements of subsection 1, but which is valid in other respects, is enforceable:
  - a. If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
  - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
  - c. With respect to goods that have been received and accepted by the lessee.
5. The lease term under a lease contract referred to in subsection 4 is:
  - a. If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
  - b. If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
  - c. A reasonable lease term.

41-02.1-11. (2A-202) Final written expression - Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by course of dealing or usage of trade or by course of performance; and by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

41-02.1-12. (2A-203) Seals inoperative. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

41-02.1-13. (2A-204) Formation in general.

1. A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.
2. An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.
3. Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

41-02.1-14. (2A-205) Firm offers. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

41-02.1-15. (2A-206) Offer and acceptance in formation of lease contract.

1. Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.
2. If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

41-02.1-16. (2A-207) Course of performance or practical construction.

1. If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.
2. The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.
3. Subject to section 41-02.1-17, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

41-02.1-17. (2A-208) Modification, rescission, and waiver.

1. An agreement modifying a lease contract needs no consideration to be binding.

2. A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.
3. Although an attempt at modification or rescission does not satisfy the requirements of subsection 2, it may operate as a waiver.
4. A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

41-02.1-18. (2A-209) Lessee under finance lease as beneficiary of supply contract.

1. The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but subject to the terms of the warranty and of the supply contract and all of the supplier's defenses or claims arising therefrom.
2. The extension of the benefit of the supplier's promises and warranties to the lessee (subsection 1 of section 41-02.1-09) does not modify the rights and obligations of the parties to the supply contract, or impose any duty or liability under the supply contract on the lessee.
3. Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. Whenever a modification or rescission of the supply contract is effective between the supplier and the lessee, the lessor, in addition to the obligations of the lessor under the lease contract, is treated as having assumed all obligations of the supplier and warranties which were so modified or rescinded as they existed or were available to the lessee prior to modification or rescission.
4. In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection 1, the lessee retains all rights that the lessee may have against the supplier which arise from any agreement between the lessee and the supplier or from any other law.

41-02.1-19. (2A-210) Express warranties.

1. Express warranties by the lessor are created as follows:
  - a. Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis

of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

- b. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.
  - c. Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.
2. It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

41-02.1-20. (2A-211) Warranties against interference and against infringement - Lessee's obligation against infringement.

1. There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.
2. Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.
3. A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

41-02.1-21. (2A-212) Implied warranty of merchantability.

1. Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.
2. Goods to be merchantable must:
  - a. Pass without objection in the trade under the description in the lease agreement;
  - b. In the case of fungible goods, be of fair average quality within the description;
  - c. Be fit for the ordinary purposes for which goods of that type are used;
  - d. Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

- e. Be adequately contained, packaged, and labeled as the lease agreement may require; and
  - f. Conform to any promises or affirmations of fact made on the container or label.
3. Other implied warranties may arise from course of dealing or usage of trade.

41-02.1-22. (2A-213) Implied warranty of fitness for particular purpose. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

41-02.1-23. (2A-214) Exclusion or modification of warranties.

1. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 41-02.1-11 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.
2. Subject to subsection 3, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection 3, to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".
3. Notwithstanding subsection 2, but subject to subsection 4:
  - a. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
  - b. If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
  - c. An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.
4. To exclude or modify a warranty against interference or against infringement (section 41-02.1-20) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing,

or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

41-02.1-24. (2A-215) Cumulation and conflict of warranties express or implied. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

1. Exact or technical specifications displace an inconsistent sample or model or general language of description.
2. A sample from an existing bulk displaces inconsistent general language of description.
3. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

41-02.1-25. (2A-216) Third-party beneficiaries of express and implied warranties. A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may not be excluded, modified, or limited with respect to injury to the person of an individual to whom the warranty extends, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against the beneficiary designated under this section.

41-02.1-26. (2A-217) Identification. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

1. When the lease contract is made, if the lease contract is for a lease of goods that are existing and identified.
2. When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified.
3. When the young are conceived, if the lease contract is for a lease of unborn young of animals.

41-02.1-27. (2A-218) Insurance and proceeds.

1. A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.
2. If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

3. Notwithstanding a lessee's insurable interest under subsections 1 and 2, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.
4. Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.
5. The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

41-02.1-28. (2A-219) Risk of loss.

1. Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.
2. Subject to section 41-02.1-29, if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:
  - a. If the lease contract requires or authorizes the goods to be shipped by carrier:
    - (1) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
    - (2) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.
  - b. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgement by the bailee of the lessee's right to possession of the goods.
  - c. In any case not within subdivision a or b, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

41-02.1-29. (2A-220) Effect of default on risk of loss.

1. Where risk of loss is to pass to the lessee and the time of passage is not stated:
  - a. If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

b. If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

2. Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in lessor or supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

41-02.1-30. (2A-221) Casualty to identified goods. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee under the lease agreement or section 41-02.1-28, then:

1. If the loss is total, the lease contract is avoided.
2. If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

41-02.1-31. (2A-301) Enforceability of lease contract. Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

41-02.1-32. (2A-302) Title to and possession of goods. Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

41-02.1-33. (2A-303) Alienability of party's interest under lease contract or of lessor's residual interest in goods - Delegation of performance - Transfer of rights.

1. Except as provided in subsections 2 and 3, a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or that makes such a transfer an event of default, is enforceable as provided in subsection 4, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective. "Creation of a security interest" as used in this section includes the sale of a lease contract that is subject to chapter 41-09.



2. A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract, or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or delegation of a material performance of either party to the lease contract in violation of the provision.
3. A transfer of a right to damages for default with respect to the whole lease contract or a transfer of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, which includes the creation of a security interest in the right to future payment under a lease contract that is granted by a lessor who has no remaining performance under the lease contract, may not be prohibited or made an event of default and is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within subsection 4 of this section.
4. Subject to subsections 2 and 3, if a transfer is made that is prohibited or is an event of default under a lease agreement, or if a transfer is made that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party prejudiced by the transfer agrees at any time to the transfer in the lease contract or otherwise, then that party has, if the transfer is made an event of default, the rights and remedies provided under subsection 2 of section 41-02.1-48. In all other cases, except as limited by contract, the transferor is liable to the prejudiced party for damages caused by the transfer to the extent the damages could not reasonably be prevented by the prejudiced party. A court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.
5. A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee and acceptance by the transferee constitutes a promise by the transferee to perform those duties. This promise is enforceable by either the transferor or the other party to the lease contract.
6. Unless otherwise agreed by the lessor and the lessee, no delegation of performance relieves the transferor as against the other party of any duty to perform or any liability for default.
7. To prohibit the transfer of an interest of a party under a consumer lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

41-02.1-34. (2A-304) Subsequent lease of goods by lessor.

1. Subject to section 41-02.1-33, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsections 2 and 4 of section 41-02.1-75, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of purchase the lessor has that power even though any of the following are met:
  - a. The lessor's transferor was deceived as to the identity of the lessor.
  - b. The delivery was in exchange for a check which is later dishonored.
  - c. It was agreed that the transaction was to be a "cash sale".
  - d. The delivery was procured through fraud punishable as larcenous under the criminal law.
2. A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of the lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.
3. A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

41-02.1-35. (2A-305) Sale or sublease of goods by lessee.

1. Subject to section 41-02.1-33, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsections 2 and 4 of section 41-02.1-59, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transfer of lease, the lessee has that power even though any of the following are met:
  - a. The lessor was deceived as to the identity of the lessee.
  - b. The delivery was in exchange for a check which is later dishonored.

- c. The delivery was procured through fraud punishable as larcenous under the criminal law.
2. A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.
3. A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

41-02.1-36. (2A-306) Priority of certain liens arising by operation of law. If a person in the ordinary course of business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

41-02.1-37. (2A-307) Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

1. Except as otherwise provided in section 41-02.1-36, a creditor of a lessee takes subject to the lease contract.
2. Except as otherwise provided in subsections 3 and 4 of this section and in sections 41-02.1-36 and 41-02.1-38, a creditor of a lessor takes subject to the lease contract unless any of the following is met:
- a. The creditor holds a lien that attached to the goods before the lease contract became enforceable.
- b. The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest.
- c. The creditor holds a security interest in the goods was perfected (section 41-09-24) before the lease contract became enforceable.
3. A lessee in the ordinary course of business takes the leasehold free of a security interest is perfected and the lessee knows of its existence.
4. A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment

entered into without knowledge of the lease and before the expiration of the forty-five-day period.

41-02.1-38. (2A-308) Special rights of creditors.

1. A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.
2. Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and the lease contract is made under circumstances which under any statute or rule of law apart from this chapter would constitute a fraudulent transfer or voidable preference.
3. A creditor of a seller may treat a sale or an identification of goods to contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods under a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

41-02.1-39. (2A-309) Lessor's and lessee's rights when goods become fixtures.

1. In this section:

- a. Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.
- b. A "fixture filing" is the filing, in the office where a mortgage on the real estate would be recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of subsection 5 of section 41-09-41.
- c. A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.
- d. A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.
- e. "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

2. Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.
3. This chapter does not prevent creation of a lease of fixtures under real estate law.
4. The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if either of the following exists:
  - a. The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate.
  - b. The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.
5. The interest of a lessor of fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate if any of the following are met:
  - a. The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable.
  - b. The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable.
  - c. The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures.
  - d. The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
6. Notwithstanding subdivision a of subsection 4 but otherwise subject to subsections 4 and 5, the interest of a lessor of fixtures including the lessor's residual interest is subordinate to the conflicting interest of an encumbrance of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real

estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

7. In cases not within the preceding subsections, priority between the interest of a lessor of fixtures including the lessor's residual interest and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.
8. If the interest of a lessor of fixtures including the lessor's residual interest has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may on default, expiration, termination, or cancellation of the lease agreement by the other party but subject to the provisions of the lease agreement and this chapter, or if necessary to enforce other rights and remedies under this chapter of the lessor or the lessee, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the party removing the goods must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.
9. Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures including the lessor's residual interest is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (chapter 41-09).

41-02.1-40. (2A-310) Lessor's and lessee's rights when goods become accessions.

1. Goods are "accessions" when they are installed in or affixed to other goods.
2. The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection 4.
3. The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection 4 but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.
4. The interest of a lessor or a lessee under a lease contract described in subsection 2 or 3 is subordinate to the interest of:

- a. A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions.
  - b. A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.
5. When under subsection 2 or 3 a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may on default, expiration, termination, or cancellation of the lease contract by the other party, but subject to the provisions of the lease contract and this chapter, or if necessary to enforce his or her other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole. However, the lessor or the lessee must reimburse any holder of an interest in the whole, who is not the lessee and who has not otherwise agreed, for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

41-02.1-41. (2A-311) Priority subject to subordination. Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

41-02.1-42. (2A-401) Insecurity - Adequate assurance of performance.

1. A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.
2. If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.
3. A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty days after receipt of a demand by the other party.
4. Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.
5. Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

41-02.1-43. (2A-402) Anticipatory repudiation. If either party repudiates a lease contract with respect to a performance not yet due under

the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

1. For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party.
2. Make demand under section 41-02.1-42 and await assurance of future performance adequate under the circumstances of the particular case.
3. Resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.

In addition, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 41-02.1-71).

41-02.1-44. (2A-403) Retraction of anticipatory repudiation.

1. Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.
2. Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 41-02.1-42.
3. Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

41-02.1-45. (2A-404) Substituted performance.

1. If without fault of the lessee, the lessor, or the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.
2. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
  - a. The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent.
  - b. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's



obligation unless the regulation is discriminatory, oppressive, or predatory.

41-02.1-46. (2A-405) Excused performance.

Subject to section 41-02.1-45 on substituted performance, the following rules apply:

1. Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections 2 and 3 is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, regardless of whether the regulation or order later proves to be invalid.
2. If the causes mentioned in subsection 1 affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among its customers but at its option may include regular customers not then under contract for sale or lease as well as its own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.
3. The lessor seasonably shall notify the lessee and, in the case of a finance lease, the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection 2, of the estimated quote thus made available for the lessee.

41-02.1-47. (2A-406) Procedure on excused performance.

1. If the lessee receives notification of a material or indefinite delay or an allocation justified under section 41-02.1-46, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 41-02.1-58), either:
  - a. Terminate the lease contract (subsection 2 of section 41-02.1-53).
  - b. Except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quote in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
2. If, after receipt of a notification from the lessor under section 41-02.1-46, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty days, the lease contract lapses with respect to any deliveries affected.

41-02.1-48. (2A-407) Irrevocable promises - Finance leases.

1. In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
2. A promise that has become irrevocable and independent under subsection 1:
  - a. Is effective and enforceable between the parties and by or against third parties including assignees of the parties.
  - b. Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.
3. This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

41-02.1-49. (2A-501) Default - Procedure.

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.
2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.
3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, under this chapter.
4. Except as otherwise provided in subsection 1 of section 41-01-06, this chapter, or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.
5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with the party's rights and remedies in respect of the real property, in which case this part does not apply.

41-02.1-50. (2A-502) Notice after default. Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

41-02.1-51. (2A-503) Modification or impairment of rights and remedies.

1. Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in

substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

2. Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.
3. Consequential damages may be liquidated under section 41-02.1-52, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.
4. Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

41-02.1-52. (2A-504) Liquidation of damages.

1. Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.
2. If the lease agreement provides for liquidation of damages, and the provision does not comply with subsection 1, or the provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.
3. If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 41-02.1-73 or 41-02.1-74), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:
  - a. The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages under subsection 1; or
  - b. In the absence of those terms, twenty percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of that amount or five hundred dollars.
4. A lessee's right to restitution under subsection 3 is subject to offset to the extent the lessor establishes:
  - a. A right to recover damages under the provisions of this chapter other than subsection 1; and

- b. The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

41-02.1-53. (2A-505) Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

1. On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.
2. On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.
3. Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.
4. Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.
5. Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

41-02.1-54. (2A-506) Statute of limitations.

1. An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.
2. A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.
3. If an action commenced within the time limited by subsection 1 is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
4. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this chapter becomes effective.

41-02.1-55. (2A-507) Proof of market rent - Time and place.

1. Damages based on market rent (section 41-02.1-67 or 41-02.1-76) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.
2. If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.
3. Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until the party has given the other party notice that the court finds sufficient to prevent unfair surprise.
4. If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

41-02.1-56. (2A-508) Lessee's remedies.

1. If a lessor fails to deliver the goods in conformity to the lease contract (section 41-02.1-57) or repudiates the lease contract (section 41-02.1-43), or a lessee rightfully rejects the goods (section 41-02.1-57) or justifiably revokes acceptance of the goods (section 41-02.1-65), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 41-02.1-58), the lessor is in default under the lease contract and the lessee may:
  - a. Cancel the lease contract (subsection 1 of section 41-02.1-53).
  - b. Recover so much of the rent and security as has been paid as is just under the circumstances.
  - c. Cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 41-02.1-66 and 41-02.1-68), or recover damages for nondelivery (sections 41-02.1-67 and 41-02.1-68).
  - d. Exercise any other rights or remedies provided in the lease contract.
2. If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

- a. If the goods have been identified, recover them (section 41-02.1-70); or
  - b. In a proper case, obtain specific performance or replevy the goods (section 41-02.1-80).
3. If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and remedies provided in the lease contract, which may include a right to cancel the lease, and under subsection 3 of section 41-02.1-67.
  4. If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection 4 of section 41-02.1-67).
  5. On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of subsection 5 of section 41-02.1-75.
  6. Subject to the provisions of section 41-02.1-48, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

41-02.1-57. (2A-509) Lessee's rights on improper delivery - Rightful rejection.

1. Subject to the provisions of section 41-02.1-58 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.
2. Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

41-02.1-58. (2A-510) Installment lease contracts - Rejection and default.

1. Under an installment lease contract, a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents. If, however, the nonconformity does not fall within subsection 2 and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.
2. Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole, there is a default with respect to the whole.

But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

41-02.1-59. (2A-511) Merchant lessee's duties as to rightfully rejected goods.

1. Subject to any security interest of a lessee (subsection 5 of section 41-02.1-56), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
2. If a merchant lessee or any other lessee (section 41-02.1-60) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.
3. In complying with this section or section 41-02.1-60, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.
4. A purchaser who purchases in good faith from a lessee under this section or section 41-02.1-60 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

41-02.1-60. (2A-512) Lessee's duties as to rightfully rejected goods.

1. Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 41-02.1-59) and subject to any security interest of a lessee (subsection 5 of section 41-02.1-56):
  - a. The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
  - b. If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 41-02.1-59; but

c. The lessee has no further obligations with regard to goods rightfully rejected.

2. Action by the lessee pursuant to subsection 1 is not acceptance or conversion.

41-02.1-61. (2A-513) Cure by lessor of improper tender or delivery - Replacement.

1. If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

2. If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or the supplier seasonably notifies the lessee.

41-02.1-62. (2A-514) Waiver of lessee's objections.

1. In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

a. If, stated seasonably, the lessor or the supplier could have cured it (section 41-02.1-61); or

b. Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

41-02.1-63. (2A-515) Acceptance of goods.

1. Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

a. The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

b. The lessee fails to make an effective rejection of the goods (subsection 2 of section 41-02.1-57).

2. Acceptance of a part of any commercial unit is acceptance of that entire unit.



41-02.1-64. (2A-516) Effect of acceptance of goods - Notice of default - Burden of establishing default after acceptance - Notice of claim or litigation to person answerable over.

1. A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.
2. A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.
3. If a tender has been accepted:
  - a. Within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;
  - b. Except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 41-02.1-20) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and
  - c. The burden is on the lessee to establish any default.
4. If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over:
  - a. The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so, the lessor or the supplier will be bound in any action by the lessee by any determination of fact common to the two litigations, then unless the lessor or the supplier after seasonable receipt of the notice does come in and defend the lessor or the supplier is so bound.
  - b. The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 41-02.1-20) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.
5. The provisions of subsections 3 and 4 apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 41-02.1-20).

41-02.1-65. (2A-517) Revocation of acceptance of goods.

1. A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if:
  - a. Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
  - b. Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.
2. Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor commits a default under the lease contract which substantially impairs the value of that lot or commercial unit to the lessee.
3. If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit for other defaults by the lessor.
4. Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.
5. A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

41-02.1-66. (2A-518) Cover - Substitute goods.

1. After default by a lessor under the lease contract as described in subsection 1 of section 41-02.1-56 or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease or contract to purchase or lease goods in substitution for those due from the lessor.
2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section 41-02.1-51), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 41-02.1-67 governs.

41-02.1-67. (2A-519) Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section 41-02.1-51), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-66, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.
2. Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
3. If the lessee has accepted goods and given notification (subsection 3 of section 41-02.1-64), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.
4. The measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

41-02.1-68. (2A-520) Lessee's incidental and consequential damages.

1. Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.
2. Consequential damages resulting from a lessor's default include:
  - a. Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason

to know and which could not reasonably be prevented by cover or otherwise; and

- b. Injury to person or property proximately resulting from any breach of warranty.

41-02.1-69. (2A-521) Lessee's right to specific performance or replevin.

1. Specific performance may be decreed if the goods are unique or in other proper circumstances.
2. A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.
3. A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

41-02.1-70. (2A-522) Lessee's right to goods on lessor's insolvency.

1. Subject to subsection 2 and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 41-02.1-26) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified to a lease contract only if they conform to the lease contract.
2. A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

41-02.1-71. (2A-523) Lessor's remedies.

1. If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 41-02.1-58), the lessee is in default under the lease contract and the lessor may:
  - a. Cancel the lease contract (subsection 1 of section 41-02.1-53).
  - b. Proceed respecting goods not identified to the lease contract (section 41-02.1-72).
  - c. Withhold delivery of the goods and take possession of goods previously delivered (section 41-02.1-73).
  - d. Stop delivery of the goods by any bailee (section 41-02.1-74).

- e. Dispose of the goods and recover damages (section 41-02.1-75), or retain the goods and recover damages (section 41-02.1-76), or in a proper case recover rent (section 41-02.1-77).
  - f. Exercise any other rights or remedies provided in the lease contract.
2. If a lessor does not exercise the rights to which the lessor is entitled under subsection 1, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any manner which is reasonable, together with incidental damages, less expenses saved in consequence of the lessee's default.
3. If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and remedies provided in the lease contract, which may include a right to cancel the lease, and unless otherwise provided in the lease contract:
- a. If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and remedies provided under subsection 1 or 2.
  - b. If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover under subsection 2.

41-02.1-72. (2A-524) Lessor's right to identify goods to lease contract.

1. A lessor aggrieved under subsection 1 of section 41-02.1-70 may:
- a. Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
  - b. Dispose of goods (subsection 1 of section 41-02.1-74) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.
2. If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

41-02.1-73. (2A-525) Lessor's right to possession of goods.

1. If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.
2. The lessor has on a default by the lessee under the lease contract described in subsection 1 of section 41-02.1-71 or in subdivision a of subsection 3 of section 41-02.1-71 the right to take possession

of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business and may dispose of goods on the lessee's premises (section 41-02.1-75).

3. The lessor may proceed under subsection 2 without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

41-02.1-74. (2A-526) Lessor's stoppage of delivery in transit or otherwise.

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason that the lessor has a right to withhold or take possession of the goods.
2. In pursuing its remedies under subsection 1, the lessor may stop delivery until:
  - a. Receipt of the goods by the lessee;
  - b. Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
  - c. Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.
3. a. To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
  - b. After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
  - c. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

41-02.1-75. (2A-527) Lessor's rights to dispose of goods.

1. After a default by a lessee under the lease contract described in subsection 1 of section 41-02.1-71 or in subdivision a of subsection 3 of section 41-02.1-71 or after the lessor refuses to deliver or takes possession of goods (section 41-02.1-73 or 41-02.1-74), the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.
2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section

41-02.1-51), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages accrued and unpaid rent as of the date of the commencement of the new term of the new lease agreement, the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 41-02.1-76 governs.
4. A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.
5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection 5 of section 41-02.1-56).

41-02.1-76. (2A-528) Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 41-02.1-52) or determined by agreement of the parties (subsection 3 of section 41-01-02 and section 41-02.1-51), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2 of section 41-02.1-75, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default described in subsection 1 of section 41-02.1-70 or in subdivision a of subsection 3 of section 41-02.1-70, or, if agreed, for other default of the lessee accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or if the lessee has taken possession of the goods, as of the date the lessor repossess the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default.

2. If the measure of damages provided in subsection 1 is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 41-02.1-78, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

41-02.1-77. (2A-529) Lessor's action for the rent.

1. After default by the lessee under the lease contract as described in subsection 1 of section 41-02.1-71 or subdivision a of subsection 3 of section 41-02.1-70 or, if agreed, after other default by the lessee, if the lessor complies with subsection 2, the lessor may recover from the lessee as damages:
  - a. For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 41-02.1-28), accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, less expenses saved in consequence of the lessee's default; and
  - b. For goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, accrued and unpaid rent as of the date of entry of judgment in favor of the lessor the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and any incidental damages allowed under section 41-02.1-78, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under section 41-02.1-75 or 41-02.1-76 less expenses saved in consequence of the lessee's default.
2. Except as provided in subsection 3, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.
3. The lessor may dispose of the goods at any time before collection of the judgment for damages obtained under subsection 1. If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages will be governed by section 41-02.1-75 or 41-02.1-76.
4. Payment of the judgment for damages obtained under subsection 1 entitles the lessee to use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.
5. After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section



41-02.1-42), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under sections 41-02.1-75 and 41-02.1-76.

41-02.1-78. (2A-530) Lessor's incidental damages. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care, and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

41-02.1-79. (2A-531) Standing to sue third parties for injury to goods.

1. If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract, the lessor has a right of action against the third party, and the lessee also has a right of action against the third party if the lessee:
  - a. Has a security interest in the goods;
  - b. Has an insurable interest in the goods; or
  - c. Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.
2. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the plaintiff's suit or settlement, subject to the plaintiff's own interest, is as a fiduciary for the other party to the lease contract.
3. Either party with the consent of the other may sue for the benefit of whom it may concern.

41-02.1-80. (2A-532) Lessor's rights to residual interest. In addition to any other recovery permitted by this chapter or other law, the lessor is entitled to recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

SECTION 10. Chapter 41-03 of the North Dakota Century Code is created and enacted as follows:

41-03-01. (3-101) Short title. This chapter may be cited as Uniform Commercial Code - Negotiable instruments.

41-03-02. (3-102) Subject matter.

1. This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by chapter 41-04.1, or to securities governed by chapter 41-08.

2. In the event of conflict between this chapter and chapter 41-04 or 41-09, chapters 41-04 and 41-09 prevail over this chapter.
3. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

41-03-03. (3-103) Definitions.

1. In this chapter:

- a. "Acceptor" means a drawee that has accepted a draft.
- b. "Drawee" means a person ordered in a draft to make payment.
- c. "Drawer" means a person that signs a draft as a person ordering payment.
- d. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- e. "Maker" means a person that signs a note as promisor of payment.
- f. "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- g. "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards prevailing in the area in which that person is located with respect to the business in which that person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or chapter 41-04.
- h. "Party" means a party to an instrument.
- i. "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- j. "Prove" with respect to a fact means to meet the burden of establishing the fact (subsection 8 of section 41-01-11).
- k. "Remitter" means a person that purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Acceptance". Section 41-03-46.
  - b. "Accommodated party". Section 41-03-56.
  - c. "Accommodation party". Section 41-03-56.
  - d. "Alteration". Section 41-03-44.
  - e. "Anomalous endorsement". Section 41-03-24.
  - f. "Blank endorsement". Section 41-03-24.
  - g. "Cashier's check". Section 41-03-04.
  - h. "Certificate of deposit". Section 41-03-04.
  - i. "Certified check". Section 41-03-46.
  - j. "Check". Section 41-03-04.
  - k. "Consideration". Section 41-03-29.
  - l. "Draft". Section 41-03-04.
  - m. "Endorsement". Section 41-03-23.
  - n. "Endorser". Section 41-03-23.
  - o. "Fiduciary". Section 41-03-33.
  - p. "Holder in due course". Section 41-03-28.
  - q. "Incomplete instrument". Section 41-03-15.
  - r. "Instrument". Section 41-03-04.
  - s. "Issue". Section 41-03-05.
  - t. "Issuer". Section 41-03-05.
  - u. "Negotiable instrument". Section 41-03-04.
  - v. "Negotiation". Section 41-03-20.
  - w. "Note". Section 41-03-04.
  - x. "Payable at a definite time". Section 41-03-08.
  - y. "Payable on demand". Section 41-03-08.
  - z. "Payable to bearer". Section 41-03-09.
  - aa. "Payable to order". Section 41-03-09.

- bb. "Payment". Section 41-03-64.
- cc. "Person entitled to enforce". Section 41-03-27.
- dd. "Presentment". Section 41-03-58.
- ee. "Reacquisition". Section 41-03-26.
- ff. "Represented person". Section 41-03-33.
- gg. "Special endorsement". Section 41-03-24.
- hh. "Teller's check". Section 41-03-04.
- ii. "Transfer of instrument". Section 41-03-22.
- jj. "Traveler's check". Section 41-03-04.
- kk. "Value". Section 41-03-29.

3. The following definitions in other chapters apply to this chapter:

- a. "Bank". Section 41-04-05.
- b. "Banking day". Section 41-04-04.
- c. "Clearinghouse". Section 41-04-04.
- d. "Collecting bank". Section 41-04-05.
- e. "Customer". Section 41-04-04.
- f. "Depository bank". Section 41-04-05.
- g. "Documentary draft". Section 41-04-04.
- h. "Intermediary bank". Section 41-04-05.
- i. "Item". Section 41-04-04.
- j. "Payor bank". Section 41-04-05.
- k. "Suspends payments". Section 41-04-04.

4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-03-04. (3-104) Negotiable instrument.

1. "Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- a. Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

- b. Is payable on demand or at a definite time; and
- c. Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, except that the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of any law intended for the advantage or protection of any obligor.
2. "Instrument" means a negotiable instrument.
3. An order that meets all of the requirements of subsection 1 except subdivision a and otherwise falls within the definition of "check" in subsection 6 is a negotiable instrument and a check.
4. Notwithstanding subsection 1, a promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.
5. An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", the person entitled to enforce the instrument may treat it as either.
6. "Check" means a draft, other than a documentary draft, payable on demand and drawn on a bank or a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term such as "money order".
7. "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
8. "Teller's check" means a draft drawn by a bank on another bank or payable at or through a bank.
9. "Traveler's check" means an instrument that is payable on demand, is drawn on or payable at or through a bank, is designated by the term "traveler's check" or by a substantially similar term, and requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
10. "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.
- 41-03-05. (3-105) Issue of instrument.
1. "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

2. An unissued instrument or an unissued incomplete instrument (section 41-03-15) that is completed is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.
3. "Issuer" applies to issued and unissued instruments and means any person that signs an instrument as maker or drawer.

41-03-06. (3-106) Unconditional promise or order.

1. Except as provided in this section, for the purposes of subsection 1 of section 41-03-04, a promise or order is unconditional unless it states an express condition to payment or states that the promise or order is subject to or governed by another writing or that rights or obligations with respect to the promise or order are stated in another writing. A mere reference to another writing does not make the promise or order conditional.
2. A promise or order is not made conditional by a reference to another writing for a statement of rights with respect to collateral, prepayment, or accelerating or because payment is limited to resort to a particular fund or source.
3. If a promise or order requires as a condition to payment a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection 1 of section 41-03-04. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.
4. If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection 1 of section 41-03-04, but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

41-03-07. (3-107) Instrument payable in foreign money. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

41-03-08. (3-108) Payable on demand or at a definite time.

1. A promise or order is "payable on demand" if it states that it is payable on demand or at sight, or otherwise indicates that it is

payable at the will of the holder, or if it does not state any time of payment.

2. A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of prepayment, acceleration, extension at the option of the holder, or extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
3. If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

41-03-09. (3-109) Payable to bearer or to order.

1. A promise or order is payable to bearer if it meets any of the following conditions:

- a. States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment.
  - b. Does not state a payee.
  - c. States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
2. A promise or order that is not payable to bearer is payable to order if it is payable to the order of an identified person or to an identified person or order. A promise or order that is payable to order is payable to the identified person.
  3. An instrument payable to bearer may become payable to an identified person if it is specially endorsed as stated in subsection 1 of section 41-03-24. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank as stated in subsection 2 of section 41-03-24.

41-03-10. (3-110) Identification of person to whom instrument is payable.

1. The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as or in the name or behalf of the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

2. If the signature of the issuer of an instrument is made by automated means such as a checkwriting machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.
3. A person to whom an instrument is payable may be identified in any way including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:
  - a. If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
  - b. If an instrument is payable to:
    - (1) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named.
    - (2) A person described as agent or similar representative of a named or identified person, the instrument is payable either to the represented person, the representative, or a successor of the representative.
    - (3) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization.
    - (4) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.
4. If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

41-03-11. (3-111) Place of payment. Except as otherwise provided for items in chapter 41-04, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen



by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

41-03-12. (3-112) Interest.

1. Unless otherwise provided in the instrument, an instrument is not payable with interest and interest on an interest-bearing instrument is payable from the date of the instrument.
2. Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

41-03-13. (3-113) Date of instrument.

1. An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in subsection 3 of section 41-04-28, an instrument payable on demand is not payable before the date of the instrument.
2. If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

41-03-14. (3-114) Contradictory terms of instrument. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

41-03-15. (3-115) Incomplete instrument.

1. "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.
2. Subject to subsection 3, if an incomplete instrument is an instrument under section 41-03-04, it may be enforced according to its terms if it is not completed or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 41-03-04 but, after completion, the requirements of section 41-03-04 are met, the instrument may be enforced according to its terms as augmented by completion.
3. If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument governed by section 41-03-44.

4. The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

41-03-16. (3-116) Joint and several liability - Contribution.

1. Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who are endorsing joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.
2. Except as provided in subsection 5 of section 41-03-56 or by agreement of the affected parties, a party having joint and several liability that pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.
3. Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection 2 of a party having the same joint and several liability to receive contribution from the party discharged.

41-03-17. (3-117) Other agreements affecting an instrument. Subject to applicable law regarding exclusion of proof of contemporaneous or prior agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument if the instrument is issued or the obligation is incurred in reliance on the agreement or as a part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

41-03-18. (3-118) Statute of limitations.

1. Except as provided in subsection 5, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.
2. Except as provided in subsection 4 or 5, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for continuous period of ten years.
3. Except as provided in subsection 4, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.
4. An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or

traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

5. An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.
6. This subsection applies to an action to enforce the obligation of a party to pay an accepted draft, other than a certified check. If the obligation of the acceptor is payable at a definite time, the action must be commenced within six years after the due date or dates stated in the draft or acceptance. If the obligation of the acceptor is payable on demand, the action must be commenced within six years after the date of the acceptance.
7. Unless governed by other law regarding claims for indemnity or contribution, an action for conversion of an instrument, for money had and received, or like action based on conversion, for breach of warranty, or to enforce an obligation, duty, or right arising under this chapter and not governed by this section must be commenced within three years after the cause of action accrues.

41-03-19. (3-119) Notice of right to defend action. In an action for breach of an obligation for which a third person is answerable over under to this chapter or chapter 41-04, the defendant may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to the determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

41-03-20. (3-201) Negotiation.

1. "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument to a person who thereby becomes its holder, if possession is obtained from a person other than the issuer of the instrument.
2. Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

41-03-21. (3-202) Negotiation subject to rescission.

1. Negotiation is effective even if obtained from an infant, a corporation exceeding its powers, or a person without capacity, by fraud, duress, or mistake, or in breach of duty or as part of an illegal transaction.

2. To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

41-03-22. (3-203) Rights acquired by transfer.

1. An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

2. Transfer of an instrument, regardless of whether the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

3. Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.

4. If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

41-03-23. (3-204) Endorsement.

1. "Endorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument, restricting payment of the instrument, or incurring endorser's liability on the instrument regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, the terms of the instrument, the place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

2. "Endorser" means a person who makes an endorsement.

3. For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.

4. If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both,

but signature in both names may be required by a person paying or taking the instrument for value or collection.

41-03-24. (3-205) Special endorsement - Blank endorsement - Anomalous endorsement.

1. If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a "special endorsement". When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in section 41-03-10 apply to special endorsements.
2. If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a "blank endorsement". When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.
3. The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.
4. "Anomalous endorsement" means an endorsement made by a person that is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

41-03-25. (3-206) Restrictive endorsement.

1. An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.
2. An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.
3. The following rules apply to an instrument bearing an endorsement described in subsection 2 of section 41-04-13, or in blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the endorser or for a particular account:
  - a. A person, other than a bank, that purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement.
  - b. A depository bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is

- received by the endorser or applied consistently with the endorsement.
- c. A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement.
  - d. Except as otherwise provided in subdivision c, a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.
4. Except for an endorsement covered by subsection 3, the following rules apply to an instrument bearing an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person:
    - a. Unless there is notice of breach of fiduciary duty as provided in section 41-03-33, a person that purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser.
    - b. A later transferee of the instrument or person that pays the instrument is neither given notice of nor otherwise affected by the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.
  5. The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection 3 or has notice or knowledge of breach of fiduciary duty as stated in subsection 4.
  6. If an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

41-03-26. (3-207) Reacquisition. Reacquisition of an instrument occurs if it is transferred, by negotiation or otherwise, to a former holder. A former holder that reacquires the instrument may cancel endorsements made after the the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any later holder.

41-03-27. (3-301) Person entitled to enforce instrument. "Person entitled to enforce" an instrument means the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or

a person not in possession of the instrument who is entitled to enforce the instrument under section 41-03-35 or subsection 4 of section 41-03-55. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

41-03-28. (3-302) Holder in due course.

1. Subject to subsection 3 and to subsection 4 of section 41-03-06, "holder in due course" means the holder of an instrument if:
  - a. The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.
  - b. The holder took the instrument for value, in good faith, without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, without notice that the instrument contains an unauthorized signature or has been altered, without notice of any claim to the instrument stated in section 41-03-32, and without notice that any party has a defense or claim in recoupment stated in subsection 1 of section 41-03-31.
2. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection 1, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
3. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken by legal process or by purchase at an execution, bankruptcy, or creditor's sale or similar proceeding; by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or as the successor in interest to an estate or other organization.
4. If, under subdivision a of subsection 1 of section 41-03-29, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.
5. If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of

the instrument, does not exceed the amount of the unpaid obligation secured.

6. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.
7. This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

41-03-29. (3-303) Value and consideration.

1. An instrument is issued or transferred for value if any of the following exist:
  - a. The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed.
  - b. The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding.
  - c. The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due.
  - d. The instrument is issued or transferred in exchange for a negotiable instrument.
  - e. The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.
2. "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection 1, the instrument is also issued for consideration.

41-03-30. (3-304) Overdue instrument.

1. An instrument payable on demand becomes overdue at the earliest of the following times:
  - a. On the day after the day demand for payment is duly made.
  - b. If the instrument is a check, ninety days after its date.
  - c. If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and trade usage.
2. With respect to an instrument payable at a definite time the following rules apply:



- a. If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.
  - b. If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.
  - c. If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.
3. Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

41-03-31. (3-305) Defenses and claims in recoupment.

1. Except as stated in subsection 2, the right to enforce the obligation of a party to pay the instrument is subject to the following:
  - a. A defense of the obligor based on infancy of the obligor to the extent it is a defense to a simple contract, duress, lack of legal capacity, or illegality of the transaction that nullifies the obligation of the obligor; fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; and discharge of the obligor in insolvency proceedings.
  - b. A defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract.
  - c. A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument. The claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.
2. The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subdivision a of subsection 1, but is not subject to defenses of the obligor stated in subdivision b of subsection 1 or claims in recoupment stated in subdivision c of subsection 1 against a person other than the holder.
3. Except as stated in subsection 4, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 41-03-32) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the

person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

4. In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert the person entitled to enforce the instrument any defense of claim in recoupment under subsection 1 that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, or lack of legal capacity.

41-03-32. (3-306) Claims to an instrument. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

41-03-33. (3-307) Notice of breach of fiduciary duty.

1. In this section:

- a. "Fiduciary" means an agent, trustee partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.
- b. In the case of an instrument payable to the represented person or the fiduciary, as such, the taker has notice of the breach of fiduciary duty if the instrument is taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or deposited to an account other than an account of the fiduciary, as such or an account of the represented person.
- c. If an instrument is issued by the represented person or the fiduciary, as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.
- d. If the instrument is issued by the represented person or the fiduciary, as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

41-03-34. (3-308) Proof of signatures and status as holder in due course.

1. In an action with respect to an instrument, the authenticity of and authority to make each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person pursuant to subsection 1 of section 41-03-39.
2. If the validity of signatures is admitted or proved and there is compliance with subsection 1, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 41-03-27, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

41-03-35. (3-309) Enforcement of lost, destroyed, or stolen instrument.

1. A person not in possession of an instrument is entitled to enforce the instrument if that person was in rightful possession of the instrument and entitled to enforce it when loss of possession occurred; the loss of possession was not the result of a transfer by that person or a lawful seizure; and that person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
2. A person seeking enforcement of an instrument pursuant to subsection 1 must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 41-03-34 applies to the case as though the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

41-03-36. (3-310) Effect of instrument on obligation for which taken.

1. Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not

affect any liability that the obligor may have as an endorser of the instrument.

2. Unless otherwise agreed and except as provided in subsection 1, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken.
  - a. In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.
  - b. In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.
  - c. Except as provided in subdivision d, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.
  - d. If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.
3. If an instrument other than one described in subsection 1 or 2 is taken for an obligation, the effect is that stated in subsection 1 if the instrument is one on which a bank is liable as maker or acceptor or that stated in subsection 2 in any other case.

41-03-37. (3-311) Accord and satisfaction by use of instrument.

1. This section applies if a person against whom a claim is asserted proves that that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, the amount of the claim was unliquidated or subject to a bona fide dispute, and the claimant obtained payment of the instrument.
2. Unless subsection 3 applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

3. Subject to subsection 4, a claim is not discharged under subsection 2 if either of the following applies:
- a. The claimant, if an organization, proves that within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and the instrument or accompanying communication was not received by that designated person, office, or place.
  - b. The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement under subdivision a.
4. A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant or an agent of the claimant having direct responsibility with respect to the disputed obligation knew that the instrument was tendered in full satisfaction of the claim.

41-03-38. (3-401) Signature.

1. A person is not liable on an instrument unless the person signed the instrument or the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under section 41-03-39.
2. A signature may be made manually or by means of a device or machine and by the use of any name, including any trade or assumed name, or by any word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

41-03-39. (3-402) Signature by representative.

1. If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were of a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.
2. If a representative signs the name of the representative to an instrument and that signature is an authorized signature of the represented person, the following rules apply:
  - a. If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is

identified in the instrument, the representative is not liable on the instrument.

b. Subject to subsection 3, if the form of the signature does not show unambiguously that the signature is made in a representative capacity or if the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

3. If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

#### 41-03-40. (3-403) Unauthorized signature.

1. Unless otherwise provided in this chapter or chapter 41-04, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

2. If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is missing.

3. The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter.

#### 41-03-41. (3-404) Impostors - Fictitious payees.

1. If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of any person that in good faith pays the instrument or takes it for value or for collection.

2. If a person whose intent determines to whom an instrument is payable under subsection 1 or 2 of section 41-03-10 does not intend the person identified as payee to have any interest in the instrument or if the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:

a. Any person in possession of the instrument is its holder.

- b. An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of any person that in good faith pays the instrument or takes it for value or for collection.
3. Under subsection 1 or 2, an endorsement is made in the name of a payee if it is made in a name substantially similar to that of the payee or if the instrument, whether or not endorsed, or deposited in a depository bank to an account in a name substantially similar to that of the payee.
4. With respect to an instrument to which subsection 1 or 2 applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

41-03-42. (3-405) Employer responsibility for fraudulent endorsement by employee.

1. This section applies to fraudulent endorsements of instruments with respect to which an employer has entrusted an employee with responsibility as part of the employee's duties. The following definitions apply to this section:
  - a. "Employee" includes, in addition to an employee of an employer, an independent contractor and employee of an independent contractor retained by the employer.
  - b. "Fraudulent endorsement" means, in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer or, in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee.
  - c. "Responsibility" with respect to instruments means authority to sign or endorse instruments on behalf of the employer; to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition; to prepare or process instruments for issue in the name of the employer; to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer; to control the disposition of instruments to be issued in the name of the employer; or to otherwise act with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.
2. For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value

or for collection, if an employee entrusted with responsibility with respect to the instrument or a person acting in concert with the employee makes a fraudulent endorsement to the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

3. Under subsection 2, an endorsement is made in the name of the person to whom an instrument is payable if it is made in a name substantially similar to the name of that person or if the instrument, whether or not endorsed, is deposited in a name substantially similar to the name of that person.

41-03-43. (3-406) Negligence contributing to forged signature or alteration of instrument.

1. A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person that, in good faith, pays the instrument or takes it for value or for collection.
2. If the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.
3. Under subsection 1, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection 2, the burden of proving failure to exercise ordinary care is on the person precluded.

41-03-44. (3-407) Alteration.

1. "Alteration" means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party to the instrument or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of any party to the instrument.
2. Except as provided in subsection 3, an alteration fraudulently made discharges any party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges any party, and the instrument may be enforced according to its original terms.
3. A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument according to its original terms or in the case of an incomplete



instrument altered by unauthorized completion, according to its terms as completed.

41-03-45. (3-408) Drawee not liable on unaccepted draft. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

41-03-46. (3-409) Acceptance of draft - Certified check.

1. "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.
2. A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.
3. If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.
4. "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection 1 or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

41-03-47. (3-410) Acceptance varying draft.

1. If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.
2. The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.
3. If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

41-03-48. (3-411) Refusal to pay cashier's checks, teller's checks, and certified checks.

1. In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
2. If the obligated bank wrongfully refuses to pay a cashier's check or certified check, stops payment of a teller's check, or refuses to pay a dishonored teller's check, the person asserting the right

to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

3. Expenses or consequential damages under subsection 2 are not recoverable if the refusal of the obligated bank to pay occurs because the bank suspends payments; the obligated bank is asserting a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument; the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or payment is prohibited by law.

41-03-49. (3-412) Obligation of issuer of note or cashier's check. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or, if the issuer signed an incomplete instrument, according to its terms when completed as stated in sections 41-03-15 and 41-03-42. The obligation is owed to a person entitled to enforce the instrument or to an endorser that paid the instrument under section 41-03-52.

41-03-50. (3-413) Obligation of acceptor.

1. The acceptor of a draft is obliged to pay the draft according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms; if the acceptance varies the terms of the draft, according to the terms of the draft as varied; or if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser that paid the draft under section 41-03-51 or 41-03-52.
2. If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised, and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

41-03-51. (3-414) Obligation of drawer.

1. This section does not apply to cashier's checks or other drafts drawn on the drawer.
2. If an unaccepted draft is dishonored, the drawer is obliged to pay the draft according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or if the drawer signed an incomplete instrument, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. The obligation is owed to a person entitled to enforce the draft or to an endorser that paid the draft pursuant to section 41-03-52.

3. If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.
4. If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser stated in subsections 1 and 3 of section 41-03-52.
5. If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection 2 to pay the draft if the draft is not a check. No disclaimer of the liability stated in subsection 2 is effective if the draft is a check.
6. If a check is not presented for payment or given to a depository bank for collection within thirty days after its date, the drawee suspends payments after expiration of the thirty-day period without paying the check, and because of the suspension of payments the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

41-03-52. (3-415) Obligation of endorser.

1. Subject to subsections 2, 3, and 4 and to subsection 4 of section 41-03-56, if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was endorsed or, if the endorser endorsed an incomplete instrument, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser that paid the instrument pursuant to this section.
2. If an endorsement states that it is made "without recourse" or otherwise disclaims liability of the endorser, the endorser is not liable under subsection 1 to pay the instrument.
3. If notice of dishonor of an instrument is required by section 41-03-60 and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection 1 is discharged.
4. If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection 1 is discharged.
5. If an endorser of a check is liable under subsection 1 and the check is not presented for payment or given to a depository bank for collection within thirty days after the day the endorsement was made, the liability of the endorser under subsection 1 is discharged.

41-03-53. (3-416) Transfer warranties.

1. A person that transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:
  - a. The warrantor is a person entitled to enforce the instrument.
  - b. All signatures on the instrument are authentic and authorized.
  - c. The instrument has not been altered.
  - d. The instrument is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party which can be asserted against the warrantor.
  - e. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
2. A person to whom the warranties under subsection 1 are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
3. The warranties stated in subsection 1 may not be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
4. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

41-03-54. (3-417) Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:
  - a. The warrantor is or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.
  - b. The draft has not been altered.
  - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the

amount the drawee received or is entitled to receive from the drawer because of the payment. In addition the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in the first two sentences of this subsection.

3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.
4. If a dishonored draft is presented for payment to the drawer or an endorser or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:
  - a. The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.
  - b. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
5. The warranties stated in subsections 1 and 4 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection 2 or 4 is discharged to the extent of any loss caused by the delay in giving notice of the claim.
6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

41-03-55. (3-418) Payment or acceptance by mistake.

1. Except as provided in subsection 3, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that payment of the draft had not been stopped under section 41-04-34 or that the signature of the purported drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the

drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

2. Except as provided in subsection 3, if an instrument has been paid or accepted by mistake and the case is not covered by subsection 1, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, recover the payment from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance.
3. The remedies provided by subsection 1 or 2 may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 41-03-54 or 41-04-38.
4. Notwithstanding section 41-04-27, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection 1 or 2, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

41-03-56. (3-419) Instruments signed for accommodation.

1. If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".
2. An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection 4, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced withstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.
3. A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 41-03-67, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.
4. If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if execution of judgment against the other party has been returned

unsatisfied, the other party is insolvent or in an insolvency proceeding, the other party cannot be served with process, or it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

5. An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

41-03-57. (3-420) Conversion of instrument.

1. The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is purchased from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument or by a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.
2. In an action under subsection 1, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.
3. A representative, other than a depository bank, that has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

41-03-58. (3-501) Presentment.

1. "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or to accept a draft made to the drawee.
2. The following rules are subject to chapter 41-04, agreement of the parties, and clearinghouse rules and the like:
  - a. Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; is effective if made to any one of two or more makers, acceptors, drawees, or other payors.
  - b. Upon demand of the person to whom presentment is made, the person making presentment must exhibit the instrument; give

- reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.
- c. Without dishonoring the instrument, the party to whom presentment is made may return the instrument for lack of a necessary endorsement or refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other law or applicable rule.
  - d. The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than two p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

41-03-59. (3-502) Dishonor.

1. Dishonor of a note is governed by the following rules:
  - a. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.
  - b. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.
  - c. If the note is not payable on demand and subdivision b does not apply, the note is dishonored if it is not paid on the day it becomes payable.
2. Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:
  - a. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 41-04-29 or 41-04-30, or becomes accountable for the amount of the check under section 41-04-30.
  - b. If the draft is payable on demand and subdivision a does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.
  - c. If a draft is payable on a date stated in the draft, the draft is dishonored if presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or presentment for acceptance is duly made before the day the



draft becomes payable and the draft is not accepted on the day of presentment.

- d. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.
3. Dishonor of an unaccepted documentary draft occurs according to the rules stated in subdivisions b, c, and e of subsection 2, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.
4. Dishonor of an accepted draft is governed by the following rules:
  - a. If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.
  - b. If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
5. In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 41-03-61, dishonor occurs without presentment if the instrument is not duly accepted or paid.
6. If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

41-03-60. (3-503) Notice of dishonor.

1. The obligation of an endorser stated in subsection 1 of section 41-03-52 and the obligation of a drawer stated in subsection 3 of section 41-03-51 may not be enforced unless the endorser or drawer is given notice of dishonor of the instrument complying with this section or notice of dishonor is excused under subsection 3 of section 41-03-51.
2. Notice of dishonor may be given by any person; may be given by any commercially reasonable means including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is a sufficient notice of dishonor.
3. Subject to subsection 4 of section 41-03-61, with respect to an instrument taken for collection by a collecting bank, notice must be given by the bank before midnight of the next banking day following the banking day on which the bank receives the notice of

dishonor of the instrument and by any other person within thirty days following the day on which dishonor occurs.

41-03-61. (3-504) Excused presentment and notice of dishonor.

1. Presentment for payment or acceptance of an instrument is excused if the person entitled to present the instrument cannot with reasonable diligence make presentment; the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings; by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer; the drawer or endorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.
2. Notice of dishonor is excused if by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or if the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.
3. Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

41-03-62. (3-505) Evidence of dishonor.

1. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:
  - a. A document regular in form as provided in subsection 2 which purports to be a protest.
  - b. A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor.
  - c. A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.
2. A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

41-03-63. (3-601) Discharge and effect of discharge.

1. The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.
2. Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

41-03-64. (3-602) Payment.

1. Subject to subsection 2, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 41-03-32 by another person.
2. The obligation of a party to pay the instrument is not discharged under subsection 1 if either:
  - a. A claim to the instrument under section 41-03-32 is enforceable against the party receiving payment and payment is made with knowledge by the payor that payment is prohibited by jurisdiction or, in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument.
  - b. The person making payment knows that the instrument is a stolen instrument and pays a person that it knows is in wrongful possession of the instrument.

41-03-65. (3-603) Tender of payment.

1. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
2. If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
3. If tender of payment of an amount due on an instrument is made to the person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

41-03-66. (3-604) Discharge by cancellation or renunciation.

1. A person entitled to enforce an instrument may, with or without consideration, discharge the obligation of a party to pay the instrument by an intentional voluntary act such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge or by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.
2. Cancellation or striking out of an endorsement under subsection 1 does not affect the status and rights of a party derived from the endorsement.

41-03-67. (3-605) Discharge of endorsers and accommodation parties.

1. For the purposes of this section, the term "endorser" includes a drawer having the obligation stated in subsection 3 of section 41-03-51.
2. Discharge under section 41-03-66 of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.
3. If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser or accommodation party with respect to the right of recourse.
4. If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The endorser or accommodation party is deemed to have suffered loss as a result of the modification equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was less than the amount of the right of recourse.
5. If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent that the value of the interest is reduced to an amount less than the amount of the right of recourse of the party

asserting discharge or that the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the values of the interest. The burden of proving impairment is on the party asserting discharge.

6. If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection 5, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.
7. Under subsection 5 or 6, impairing value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral; release of collateral without substitution of collateral of equal value; failure to perform a duty to preserve the value of collateral owed, under chapter 41-01 or other law, to a debtor or surety or other person secondarily liable; or failure to comply with applicable law in disposing of collateral.
8. An accommodation party is not discharged under subsection 3, 4, or 5 unless the person entitled to enforce the instrument knows of the accommodation or has notice under subsection 3 or 4 of section 41-03-56 that the instrument was signed for accommodation.
9. A party is not discharged under this section if the party asserting discharge consents to the event or conduct that is the basis of the discharge or the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

SECTION 11. Chapter 41-04 of the North Dakota Century Code is created and enacted as follows:

41-04-01. (4-101) Short title. This chapter shall be known and may be cited as Uniform Commercial Code - Bank deposits and collections.

41-04-02. (4-102) Applicability.

1. To the extent that items within this chapter are also within the scope of chapters 41-03 and 41-08, they are subject to the provisions of those chapters. In the event of conflict, the provisions of this chapter govern those of chapter 41-03 but the provisions of chapter 41-08 govern those of this chapter.
2. The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is

located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

41-04-03. (4-103) Variation by agreement - Measure of damages - Action constituting ordinary care.

1. The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement may not disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. The parties may, however, determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.
2. Federal reserve regulations and operating circulars, clearinghouse rules, and the like have the effect of agreements under subsection 1, whether or not specifically assented to by all parties interested in items handled.
3. Action or nonaction approved by this chapter or under federal reserve regulations or operating circulars constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse and similar rules or with a general banking usage not disapproved by this chapter, constitutes prima facie the exercise of ordinary care.
4. The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures that may be reasonable under the circumstances.
5. The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

41-04-04. (4-104) Definitions and index of definitions.

1. In this chapter, unless the context otherwise requires:
  - a. "Account" means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.
  - b. "Afternoon" means the period of a day between noon and midnight.
  - c. "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.
  - d. "Clearinghouse" means an association of banks or other payors regularly clearing items.

- e. "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank.
  - f. "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 41-08-02), or instructions for uncertificated securities (section 41-08-24), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.
  - g. "Draft" means a draft as defined in section 41-03-04 or an item, other than an instrument, that is an order.
  - h. "Drawee" means a person ordered in a draft to make payment.
  - i. "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by chapter 41-04.1 or a credit or debit card slip.
  - j. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.
  - k. "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit, or by remittance, or otherwise as agreed. A settlement may be either provisional or final.
  - l. "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.
2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Bank". Section 41-04-05.
  - b. "Collecting bank". Section 41-04-05.
  - c. "Depository bank". Section 41-04-05.
  - d. "Electronic presentment agreement". Section 41-04-10.
  - e. "Intermediary bank". Section 41-04-05.
  - f. "Payor bank". Section 41-04-05.
  - g. "Presenting bank". Section 41-04-05.
  - h. "Presentment notice". Section 41-04-10.
3. The following definitions in other chapters apply to this chapter:

- a. "Acceptance". Section 41-03-46.
- b. "Alteration". Section 41-03-44.
- c. "Cashier's check". Section 41-03-04.
- d. "Certificate of deposit". Section 41-03-04.
- e. "Certified check". Section 41-03-45.
- f. "Check". Section 41-03-04.
- g. "Good faith". Section 41-03-03.
- h. "Holder in due course". Section 41-03-28.
- i. "Instrument". Section 41-03-04.
- j. "Notice of dishonor". Section 41-03-60.
- k. "Order". Section 41-03-03.
- l. "Ordinary care". Section 41-03-03.
- m. "Person entitled to enforce". Section 41-03-27.
- n. "Presentment". Section 41-03-58.
- o. "Promise". Section 41-03-03.
- p. "Prove". Section 41-03-03.
- q. "Teller's check". Section 41-03-04.
- r. "Unauthorized signature". Section 41-03-40.

4. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-04-05. (4-105) Bank - Collecting bank - Depository bank - Payor bank - Presenting bank. In this chapter, unless the context otherwise requires:

- 1. "Bank" means any person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.
- 2. "Collecting bank" means a bank handling an item for collection except the payor bank.
- 3. "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.
- 4. "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank.



5. "Payor bank" means a bank that is the drawee of a draft.
6. "Presenting bank" means a bank presenting an item except a payor bank.

41-04-06. (4-106) Payable through or payable at bank - Collecting bank.

1. If an item states that it is "payable through" a bank identified in the item, the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and the item may be presented for payment only by or through the bank.
2. If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.
3. If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

41-04-07. (4-107) Separate office of bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or orders must be given under this chapter and under chapter 41-03.

41-04-08. (4-108) Time of receipt of items.

1. For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.
2. Any item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

41-04-09. (4-109) Delays.

1. Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this chapter for a period not exceeding two additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.
2. Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter or by instructions is excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and if the bank exercises such diligence as the circumstances require.

41-04-10. (4-110) Electronic presentment.

1. "Electronic presentment agreement" means an agreement, clearinghouse rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.
2. Presentment of an item under an electronic presentment agreement is made when the presentment notice is received.
3. If presentment is made by presentment notice, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

41-04-11. (4-111) Statute of limitations. An action to enforce an obligation, duty, or right arising under this chapter must be commenced within three years after the cause of action accrues.

41-04-12. Construction of chapter - Branch banking. This chapter may not be construed to permit branch banking.

41-04-13. (4-201) Agency status of collecting banks and provisional status of credits - Applicability of chapter - Item endorsed "pay any bank".

1. Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank with respect to the item is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and valid rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.
2. After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until:
  - a. The item has been returned to the customer initiating collection; or
  - b. The item has been specially endorsed by a bank to a person who is not a bank.

41-04-14. (4-202) Responsibility for collection or return - When action timely.

1. A collecting bank must exercise ordinary care in the following matters:

- a. Presenting an item or sending it for presentment.
  - b. Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted.
  - c. Settling for an item when the bank receives final settlement.
  - d. Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.
2. A collecting bank exercises ordinary care under subsection 1 by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care but the bank has the burden or so establishing.
3. Subject to subdivision a of subsection 1, a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

41-04-15. (4-203) Effect of instructions. Subject to the provisions of chapter 41-03 concerning conversion of instruments (section 41-03-57) and restrictive endorsements (section 41-03-25), only a collecting bank's transferor may give instructions which affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken under those instructions or any agreement with its transferor.

41-04-16. (4-204) Methods of sending and presenting - Sending directly to payor bank.

1. A collecting bank shall send items by a reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved and the method generally used by it or others to present those items.
2. A collecting bank may send:
  - a. An item directly to the payor bank.
  - b. An item to any nonbank payor if authorized by its transferor.
  - c. An item other than a documentary draft to a nonbank payor, if authorized by federal reserve regulation or operating circular, clearinghouse rule or the like.
3. Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

41-04-17. (4-205) Depository bank holder of unendorsed item. If a customer delivers an item to a depository bank for collection:

1. The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer

endorses, and, if it satisfies the other requirements of section 41-03-28, it may be a holder in due course.

2. The depository bank warrants to subsequent collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

41-04-18. (4-206) Transfer between banks. Any agreed method that identifies the transferor bank is sufficient for further transfer of the item to another bank.

41-04-19. (4-207) Transfer warranties.

1. A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
  - a. The warrantor is a person entitled to enforce the item.
  - b. All signatures on the item are authentic and authorized.
  - c. The item has not been altered.
  - d. The item is not subject to a defense or claim in recoupment (subsection 1 of section 41-03-31) of any party that can be asserted against the warrantor.
  - e. The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
2. If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred, or, if the transfer was of an incomplete item, according to its terms when completed as stated in sections 41-03-15 and 41-03-44. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor may not disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.
3. A person to whom the warranties under subsection 1 are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.
4. The warranties stated in subsection 1 cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

5. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

41-04-20. (4-208) Presentment warranties.

1. If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:
- a. The warrantor is or was at the time the warrantor transferred the draft a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.
  - b. The draft has not been altered.
  - c. The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.
2. A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor and, if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in the first two sentences of this subsection.
3. If a drawee asserts a claim for breach of warranty under subsection 1 based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under section 41-03-41 or 41-03-42 or the drawer is precluded under section 41-03-43 or 41-04-37 from asserting against the drawee the unauthorized endorsement or alteration.
4. This subsection applies if a dishonored draft is presented for payment to the drawer or an endorser or if any other item is presented for payment to a party obliged to pay the item, and the item is paid. The person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is or was at the time the warrantor transferred the item a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.
5. The warranties stated in subsections 1 and 4 may not be disclaimed with respect to checks. Unless notice of a claim for breach of

warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

6. A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

41-04-21. (4-209) Encoding and retention warranties.

1. A person that encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.
2. A person that undertakes to retain an item under an electronic presentment agreement warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.
3. A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

41-04-22. (4-210) Security interest of collecting bank in items, accompanying documents, and proceeds.

1. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:
  - a. In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied.
  - b. In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge back.
  - c. If it makes an advance on or against the item.
2. If credit given for several items received at one time or under a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.
3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other

than collection, the security interest continues and is subject to the provisions of chapter 41-09, except that:

- a. No security agreement is necessary to make the security interest enforceable (subdivision a of subsection 1 of section 41-09-16).
- b. No filing is required to perfect the security interest.
- c. The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

41-04-23. (4-211) When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, provided the bank otherwise complies with the requirements of section 41-03-28.

41-04-24. (4-212) Presentment by notice of item not payable by, through, or at bank - Liability of drawer or endorser.

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 41-03-58 by the close of the bank's next banking day after it knows of the requirement.
2. If presentment is made by notice and neither payment, acceptance, nor request for compliance with a requirement under section 41-03-58 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

41-04-25. (4-213) Medium and time of settlement by bank.

1. With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearinghouse rules, and the like, or agreement. In the absence of such prescription:
  - a. The medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement.
  - b. The time of settlement is:
    - (1) With respect to tender of settlement by cash, cashier's check, or teller's check, when the cash or check is sent or delivered.

- (2) With respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made.
  - (3) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered.
  - (4) With respect to tender of settlement by a funds transfer, when payment is made under subsection 1 of section 41-04.1-31 to the person receiving settlement.
2. If the tender of settlement is not by a medium authorized by or the time of settlement is not fixed by subsection 1, no settlement occurs until the tender of settlement is accepted by the person receiving settlement.
3. If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:
  - a. Presents or forwards the check of collection, settlement is final when the check is finally paid.
  - b. Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.
4. If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

41-04-26. (4-214) Right of charge back or refund - Liability of collecting bank - Return of item.

1. If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer but is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.



2. A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or under its instructions.
3. A depository bank which is also the payor may charge back the amount of an item to its customer's account or obtain refund under the section governing return of an item received by a payor bank for credit on its books (section 41-04-29).
4. The right to charge back is not affected by:
  - a. Previous use of a credit given for the item.
  - b. Failure by any bank to exercise ordinary care with respect to the item, but any bank so failing remains liable.
5. A failure to charge back or claim refund does not affect other rights of the bank against the customer of any other party.
6. If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge back or refund learns that it will not receive payment in ordinary course.

41-04-27. (4-215) Final payment of item by payor bank - When provisional debits and credits become final - When certain credits become available for withdrawal.

1. An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:
  - a. Paid the item in cash.
  - b. Settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement.
  - c. Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.
2. If provisional settlement for an item does not become final, the item is not finally paid.
3. If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.
4. If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

5. Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:
  - a. If the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to receive return of the item and has not received the item within that time.
  - b. If the bank is both the depository bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.
6. Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

41-04-28. (4-216) Insolvency and preference.

1. Any item in or coming into the possession of a payor or collecting bank that suspends payment and which item is not finally paid must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.
2. If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.
3. If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events.
4. If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against that collecting bank.

41-04-29. (4-301) Deferred posting - Recovery of payment by return of items - Time of dishonor - Return of items by payor bank.

1. If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover any settlement if before it has made final payment and before its midnight deadline it:
  - a. Returns the item.
  - b. Sends written notice of dishonor or nonpayment if the item is unavailable for return.

2. If a demand item is received by a payor bank for credit on its books, it may return that item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection 1.
3. Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent under this section.
4. An item is returned:
  - a. As to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered under clearinghouse rules.
  - b. In all other cases, when it is sent or delivered to the bank's customer or transferor or under instructions.

41-04-30. (4-302) Payor bank's responsibility for late return of item.

1. If an item is presented to and received by a payor bank, the bank is accountable for the amount of:
  - a. A demand item, other than a documentary draft, whether properly payable or not if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline.
  - b. Any other properly payable item, unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.
2. The liability of a payor bank to pay an item under subsection 1 is subject to defenses based on breach of a presentment warranty (section 41-04-20) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

41-04-31. (4-303) When items subject to notice, stop order, legal process, or setoff - Order is which items may be charged or certified.

1. Any knowledge, notice, or stop order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:
  - a. The bank accepts or certifies the item.

- b. The bank pays the item in cash.
  - c. The bank settles for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement.
  - d. The bank becomes accountable for the amount of the item under section 41-04-30 dealing with the payor bank's responsibility for late return of items.
  - e. With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.
2. Subject to subsection 1, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

41-04-32. (4-401) When bank may charge customer's account.

- 1. A bank may charge against the account of a customer an item which is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and complies with any agreement between the customer and bank.
- 2. A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.
- 3. A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice will be effective for the period stated in subsection 1 of section 41-04-34 for stop orders, and must be received at a time and in a manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the check described in section 41-04-31. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items pursuant to section 41-04-33.
- 4. A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:
  - a. The original terms of the altered item; or
  - b. The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

41-04-33. (4-402) Bank's liability to customer for wrongful dishonor - Time of determining insufficiency of account.

1. Except as otherwise provided in this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it had agreed to pay the overdraft.
2. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact.
3. A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one such determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available fund is wrongful.

41-04-34. (4-403) Customer's right to stop payment - Burden of proof of loss.

1. A customer or any other person authorized to draw on the account may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 41-04-31. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.
2. A stop order is effective for six months after the time it is received, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in writing within that period. A stop order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop order is effective.
3. The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop payment order may include damages for dishonor of subsequent items pursuant to section 41-04-33.

41-04-35. (4-404) Bank not obliged to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

41-04-36. (4-405) Death or incompetence of customer.

1. A payor or collecting bank's authority to accept, pay or collect an item, or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.
2. Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

41-04-37. (4-406) Customer's duty to discover and report unauthorized signature or alteration.

1. A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.
2. If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.
3. If a bank sends or makes available a statement of account or items under subsection 1, the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer has a duty to give prompt notification to the bank of the relevant facts.
4. If the bank proves that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection 3, the customer is precluded from asserting against the bank:
  - a. The customer's unauthorized signature or any alteration on the item if the bank also proves that it suffered a loss by reason of that failure.
  - b. The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notification from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of

time not exceeding thirty days in which to examine the item or statement of account and notify the bank.

5. If subsection 4 applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion to the extent that the failure of each to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection 4 does not apply.
6. Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement or items are made available to the customer under subsection 1 discover and report the customer's unauthorized signature or any alteration is precluded from asserting against the bank such unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 41-04-20 with respect to the unauthorized signature or alteration to which the preclusion applies.

41-04-38. (4-407) Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights of:

- a. Any holder in due course on the item against the drawer or maker.
- b. The payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose.
- c. The drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

41-04-39. (4-501) Handling of documentary drafts - Duty to send for presentment and to notify customer of dishonor. A bank that takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of that fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

41-04-40. (4-502) Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive", or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor. The bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

41-04-41. (4-503) Responsibility of presenting bank for documents and goods - Report of reasons for dishonor - Referee in case of need. Unless otherwise instructed and except as provided in chapter 41-05 a bank presenting a documentary draft:

1. Must deliver the documents to the drawee either on payment or on acceptance of the draft if it is payable more than three days after presentment.
2. Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the referee's services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received. It has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

41-04-42. (4-504) Privilege of presenting bank to deal with goods - Security interest for expenses.

1. A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.
2. For its reasonable expenses incurred by action under subsection 1 the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

SECTION 12. Chapter 41-04.1 of the North Dakota Century Code is created and enacted as follows:

41-04.1-01. (4A-101) Short title. This chapter may be cited as Uniform Commercial Code - funds transfers.

41-04.1-02. (4A-102) Subject matter. Except as otherwise provided in section 41-05.1-08, this chapter applies to funds transfers defined in section 41-05.1-04.

41-04.1-03. (4A-103) Payment order - Definitions.

1. In this chapter:
  - a. "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:



- (1) The instruction does not state a condition to payment to the beneficiary other than time of payment.
  - (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender.
  - (3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.
- b. "Beneficiary" means the person to be paid by the beneficiary's bank.
- c. "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.
- d. "Receiving bank" means the bank to which the sender's instruction is addressed.
- e. "Sender" means the person giving the instruction to the receiving bank.
2. If an instruction complying with subdivision a of subsection 1 is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.
3. A payment order is issued when it is sent to the receiving bank.

41-04.1-04. (4A-104) Funds transfer - Definitions. In this chapter:

1. "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.
2. "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.
3. "Originator" means the sender of the first payment order in a funds transfer.
4. "Originator's bank" means the receiving bank to which the payment order of the originator is issued if the originator is not a bank or the originator if the originator is a bank.

41-04.1-05. (4A-105) Other definitions.

1. In this chapter:

- a. "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
  - b. "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.
  - c. "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
  - d. "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.
  - e. "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
  - f. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
  - g. "Prove" with respect to a fact means to meet the burden of establishing the fact subsection 8 of section 41-01-11.
2. Other definitions applying to this chapter and the sections in which they appear are:
- a. "Acceptance". Section 41-04.1-17.
  - b. "Beneficiary". Section 41-04.1-03.
  - c. "Beneficiary's bank". Section 41-04.1-03.
  - d. "Executed". Section 41-04.1-21.
  - e. "Execution date". Section 41-04.1-21.
  - f. "Funds transfer". Section 41-04.1-04.
  - g. "Funds-transfer system rule". Section 41-04.1-32.
  - h. "Intermediary bank". Section 41-04.1-04.
  - i. "Originator". Section 41-04.1-04.
  - j. "Originator's bank". Section 41-04.1-04.

- k. "Payment by beneficiary's bank to beneficiary". Section 41-04.1-30.
  - l. "Payment by originator to beneficiary". Section 41-04.1-31.
  - m. "Payment by sender to receiving bank". Section 41-04.1-28.
  - n. "Payment date". Section 41-04.1-26.
  - o. "Payment order". Section 41-04.1-03.
  - p. "Receiving bank". Section 41-04.1-03.
  - q. "Security procedure". Section 41-04.1-26.
  - r. "Sender". Section 41-04.1-03.
3. The following definitions in chapter 41-04 apply to this chapter:
- a. "Clearinghouse". Section 41-04-04
  - b. "Item". Section 41-04-04
  - c. "Suspends payments". Section 41-04-04
4. In addition chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.
- 41-04.1-06. (4A-106) Time payment order is received.
- 1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in subsection 27 of section 41-01-11. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.
  - 2. If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

41-04.1-07. (4A-107) Federal reserve regulations and operating circulars. Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

41-04.1-08. (4A-108) Exclusion of consumer transactions governed by federal law. This chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 [Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693 et seq.] as amended from time to time.

41-04.1-09. (4A-201) Security procedure. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of verifying that a payment order or communication amending or canceling a payment order is that of the customer or detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

41-04.1-10. (4A-202) Authorized and verified payment orders.

1. A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
2. If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified under a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.
3. Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the

bank in compliance with the security procedure chosen by the customer.

4. In this chapter the term "sender" includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection 1 or is effective as the order of the customer under subsection 2.
5. This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.
6. Except as provided in this section and in subdivision a of subsection 1 of section 41-04.1-11, rights and obligations arising under this section or section 41-04.1-11 may not be varied by agreement.

41-04.1-11. (4A-203) Unenforceability of certain verified payment orders.

1. If an accepted payment order is not, under subsection 1 of section 41-04.1-10, an authorized order of a customer identified as sender, but is effective as an order of the customer under subsection 2 of section 41-04.1-10, the following rules apply:

- a. By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.
- b. The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure or by a person who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

2. This section applies to amendments of payment orders to the same extent it applies to payment orders.

41-04.1-12. (4A-204) Refund of payment and duty of customer to report with respect to unauthorized payment order.

1. If a receiving bank accepts a payment order issued in the name of its customer as sender which is not authorized and not effective as the order of the customer under section 41-04.1-10 or is not enforceable, in whole or in part, against the customer under section 41-04.1-11, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer

fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer because of a failure by the customer to give notification as stated in this section.

2. Reasonable time under subsection 1 may be fixed by agreement under subsection 1 of section 41-01-14, but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

41-04.1-13. (4A-205) Erroneous payment orders.

1. If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order erroneously instructed payment to a beneficiary not intended by the sender, erroneously instructed payment in an amount greater than the amount intended by the sender, or was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:
  - a. If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 41-04.1-14 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in subdivisions b and c.
  - b. If the funds transfer is completed on the basis of an erroneous payment order, other than an erroneously transmitted duplicate of a payment order, the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.
  - c. If the funds transfer is completed on the basis of a payment order erroneously instructing payment in an amount greater than intended by the sender, the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.
2. If the sender of an erroneous payment order described in subsection 1 is not obliged to pay all or part of the order and if the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to

perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

3. This section applies to amendments to payment orders to the same extent it applies to payment orders.

41-04.1-14. (4A-206) Transmission of payment order through funds-transfer or other communication system.

1. If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.
2. This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

41-04.1-15. (4A-207) Misdescription of beneficiary.

1. Subject to subsection 2, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.
2. If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:
  - a. Except as otherwise provided in subsection 3, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.
  - b. If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.
3. If a payment order described in subsection 2 is accepted, the originator's payment order described the beneficiary inconsistently by name and number, and the beneficiary's bank pays the person

identified by number as permitted by subdivision a of subsection 2, the following rules apply:

- a. If the originator is a bank, the originator is obliged to pay its order.
  - b. If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.
4. In a case governed by subdivision a of subsection 2, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:
- a. If the originator is obliged to pay its payment order as stated in subsection 3, the originator has the right to recover.
  - b. If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

41-04.1-16. (4A-208) Misdescription of intermediary bank of beneficiary's bank.

1. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.
  - a. The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.
  - b. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in execution or attempting to execute the order.
2. This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.
  - a. If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the



sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

- b. If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subdivision a of subsection 2, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.
- c. Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.
- d. If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in subdivision a of subsection 1 of section 41-04.1-22.

41-04.1-17. (4A-209) Acceptance of payment order.

1. Subject to subsection 4, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.
2. Subject to subsections 3 and 4, a beneficiary's bank accepts a payment order at the earliest of the following times:
  - a. When the bank pays the beneficiary as stated in subsection 1 or 2 of section 41-04.1-30 or notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order.
  - b. When the bank receives payment of the entire amount of the sender's order under subdivision a or b of subsection 1 of section 41-04.1-28.

- c. The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within one hour after that time or one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.
3. Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subdivision b or c of subsection 2 if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.
4. A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled under subsection 2 of section 41-04.1-19, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

41-04.1-18. (4A-210) Rejection of payment order.

1. A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, any means complying with the agreement is reasonable, and any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.
2. This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order.

If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled under subsection 4 of section 41-04.1-19 or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

3. If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.
4. Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

41-04.1-19. (4A-211) Cancellation and amendment of payment order.

1. A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.
2. Subject to subsection 1, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.
3. After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.
  - a. With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.
  - b. With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order that is a duplicate of a payment order previously issued by the sender, that orders payment to a beneficiary not entitled to receive payment from the originator, or that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the

beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

4. An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.
5. A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issuance of a new payment order in the amended form at the same time.
6. Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.
7. A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.
8. A funds-transfer system rule is not effective to the extent it conflicts with subdivision b of subsection 3.

41-04.1-20. (4A-212) Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action or refrain from taking action with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 41-04.1-17, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

41-04.1-21. (4A-301) Execution and execution date.

1. A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank may be accepted but may not be executed.
2. "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the

order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

41-04.1-22. (4A-302) Obligations of receiving bank in execution of payment order.

1. Except as provided in subsections 2 through 4, if the receiving bank accepts a payment order under subsection 1 of section 41-04.1-17, the bank has the following obligations in executing the order:
  - a. The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning any intermediary bank or funds-transfer system to be used in carrying out the funds transfer or the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.
  - b. If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.
2. Unless otherwise instructed, a receiving bank executing a payment order may use any funds-transfer system if use of that system is reasonable in the circumstances and issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.
3. Unless subdivision b of subsection 1 applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first-class mail or by any means reasonable in the circumstances. If the receiving bank is

instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

4. Unless instructed by the sender, the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges and may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

41-04.1-23. (4A-303) Erroneous execution of payment order.

1. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or issues a payment order in execution of the sender's order and then issues a duplicate order is entitled to payment of the amount of the sender's order under subsection 3 of section 41-04.1-27 if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.
2. A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under subsection 3 of section 41-04.1-27 if that subsection is otherwise satisfied and the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.
3. If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

41-04.1-24. (4A-304) Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in section 41-04.1-23 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification

from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under subsection 4 of section 41-04.1-27 for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

41-04.1-25. (4A-305) Liability for late or improper execution or failure to execute payment order.

1. If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 41-04.1-22 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection 3 additional damages are not recoverable.
2. If execution of a payment order by a receiving bank in breach of section 41-04.1-22 results in noncompletion of the funds transfer, failure to use an intermediary bank designated by the originator, or issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection 1, resulting from the improper execution. Except as provided in subsection 3, additional damages are not recoverable.
3. In addition to the amounts payable under subsections 1 and 2, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.
4. If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.
5. Reasonable attorney's fees are recoverable if demand for compensation under subsection 1 or 2 is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection 4 and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection 4 is made and refused before an action is brought on the claim.
6. Except as stated in this section, the liability of a receiving bank under subsections 1 and 2 may not be varied by agreement.

41-04.1-26. (4A-401) Payment date. "Payment date" of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the

beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

41-04.1-27. (4A-402) Obligation of sender to pay receiving bank.

1. This section is subject to sections 41-04.1-13 and 41-04.1-15.
2. With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.
3. This subsection is subject to subsection 5 and to section 41-04.1-23. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.
4. If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 41-04.1-12 and 41-04.1-24, interest is payable on the refundable amount from the date of payment.
5. If a funds transfer is not completed as stated in subsection 3 and an intermediary bank is obliged to refund payment as stated in subsection 4 but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in subdivision a of subsection 1 of section 41-04.1-22, to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection 4.
6. The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection 3 or to receive refund under subsection 4 may not be varied by agreement.

41-04.1-28. (4A-403) Payment by sender to receiving bank.

1. Payment of the sender's obligation under section 41-04.1-27 to pay the receiving bank occurs as follows:
  - a. If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.



- b. If the sender is a bank and the sender credited an account of the receiving bank with the sender or caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.
- c. If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.
2. If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.
3. If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 41-04.1-27 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.
4. In a case not covered by subsection 1, the time when payment of the sender's obligation under subsection 2 or 3 of section 41-04.1-27 occurs is governed by applicable principles of law that determine when an obligation is satisfied.

41-04.1-29. (4A-404) Obligation of beneficiary's bank to pay and give notice to beneficiary.

1. Subject to subsection 5 of section 41-04.1-19 and subsections 4 and 5 of section 41-04.1-30, if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover

damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

2. If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.
3. The right of a beneficiary to receive payment and damages as stated in subsection 1 may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection 2 may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

41-04.1-30. (4A-405) Payment by beneficiary's bank to beneficiary.

1. If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under subsection 1 of section 41-04.1-29 occurs when and to the extent the beneficiary is notified of the right to withdraw the credit, the bank lawfully applies the credit to a debt of the beneficiary, or funds with respect to the order are otherwise made available to the beneficiary by the bank.
2. If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under subsection 1 of section 41-04.1-29 occurs is governed by principles of law that determine when an obligation is satisfied.
3. Except as stated in subsections 4 and 5, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.
4. A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if the rule requires that both the beneficiary

and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 41-04.1-31.

5. This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that nets obligations multilaterally among participants and has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement under its rules with respect to any payment order in the funds transfer, the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance; the beneficiary's bank is entitled to recover payment from the beneficiary; no payment by the originator to the beneficiary occurs under section 41-04.1-31 and subject to subsection 5 of section 41-04.1-27, each sender in the funds transfer is excused from its obligation to pay its payment order under subsection 3 of section 41-04.1-27 because the funds transfer has not been completed.

41-04.1-31. (4A-406) Payment by originator to beneficiary - Discharge of underlying obligation.

1. Subject to subsection 5 of section 41-04.1-19 and to subsections 4 and 5 of section 41-04.1-30, the originator of a funds transfer pays the beneficiary of the originator's payment order at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.
2. If payment under subsection 1 is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless the payment under subsection 1 was made by a means prohibited by the contract of the beneficiary with respect to the obligation; the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment; funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary; and the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under subsection 1 of section 41-04.1-29.

3. For the purpose of determining whether discharge of an obligation occurs under subsection 2, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.
4. Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

41-04.1-32. (4A-501) Variation by agreement and effect of funds-transfer system rule.

1. Except as otherwise provided in this chapter the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.
2. "Funds-transfer system rule" means a rule of an association of banks (a) which governs transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders or (b) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in subsection 3 of section 41-04.1-29, subsection 4 of section 41-04.1-30, and subsection 3 of section 41-04.1-38.

41-04.1-33. (4A-502) Creditor process served on receiving bank - Setoff by beneficiary's bank.

1. As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.
2. This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

3. If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:
  - a. The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.
  - b. The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.
  - c. If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.
4. Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

41-04.1-34. (4A-503) Injunction or restraining order with respect to funds transfer. For proper cause and under applicable law, a court may restrain a person from issuing a payment order to initiate a funds transfer, an originator's bank from executing the payment order of the originator, the beneficiary's bank from releasing funds to the beneficiary, or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

41-04.1-35. (4A-504) Order in which items and payment orders may be charged to account - Order withdrawal from account.

1. If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.
2. In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

41-04.1-36. (4A-505) Preclusion of objection to debit of customer's account. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

41-04.1-37. (4A-506) Rate of interest.

1. If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined by agreement of the sender and receiving bank or by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.
2. If the amount of interest is not determined by an agreement or rule as stated in subsection 1, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

41-04.1-38. (4A-507) Choice of law.

1. The following rules apply unless the affected parties otherwise agree or subsection 3 applies:
  - a. The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.
  - b. The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.
  - c. The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.
2. If the parties described in each paragraph of subsection 1 have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.
3. A funds-transfer system rule may select the law of a particular jurisdiction to govern the:
  - a. Rights and obligations between participating banks with respect to payment orders transmitted or processed through the system.

b. The rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system.

A choice of law made under subdivision a is binding on participating banks. A choice of law made under subdivision b is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

4. In the event of inconsistency between an agreement under subsection 2 and a choice-of-law rule under subsection 3, the agreement under subsection 2 prevails.

5. If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

SECTION 13. AMENDMENT. Subsection 3 of section 41-05-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Definitions in other chapters applying to this chapter and the sections in which they appear are:

a. "Accept" or "Acceptance". Section ~~41-03-47~~ 41-03-46.

b. "Contract for sale". Section 41-02-06.

c. "Draft". Section 41-03-04.

d. "Holder in due course". Section 41-03-32.

e. "Midnight deadline". Section 41-04-04.

f. "Security". Section 41-08-02.

SECTION 14. AMENDMENT. Subdivision a of subsection 2 of section 41-05-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. The issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances that would make it a holder in due course (section ~~41-03-32~~ 41-03-28) and in an appropriate case would make it a person to whom a document of title has been

duly negotiated (section 41-07-31) or a bona fide purchaser of a certificated security (section 41-08-18); and

SECTION 15. AMENDMENT. Subsection 3 of section 41-09-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The following definitions in other chapters apply to this chapter:
  - a. "Check". Section 41-03-04.
  - b. "Contract for sale". Section 41-02-06.
  - c. "Holder in due course". Section ~~41-03-32~~ 41-03-28.
  - d. "Note". Section 41-03-04.
  - e. "Sale". Section 41-02-06.

SECTION 16. AMENDMENT. Section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

41-09-13. (9-113) Security interests arising under chapter 41-02 or 41-02.1. A security interest arising solely under the chapter on sales ~~chapter 41-02~~ or 41-02.1 is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods:

1. No security agreement is necessary to make the security interest enforceable;
2. No filing is required to perfect the security interest; and
3. The rights of the secured party on default by the debtor are governed by ~~the chapter on sales~~ ~~chapter 41-02~~ in the case of a security interest arising solely under chapter 41-02 or by chapter 41-02.1 in the case of a security interest arising solely under chapter 41-02.1.

SECTION 17. AMENDMENT. Subsection 1 of section 41-09-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to the provisions of section ~~41-04-18~~ 41-04-22 on the security interest of the collecting bank, section ~~41-08-36.1~~ on security interests in securities, and section 41-09-13 on a security interest arising under the chapter on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following take place:
  - a. The collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and, in addition, if the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned.



- b. Value has been given.
- c. The debtor has rights in the collateral.

**SECTION 18. AMENDMENT.** Subdivision f of subsection 1 of section 41-09-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. A security interest of a collecting bank (section ~~41-04-18~~ 41-04-22) or in securities (section 41-08-36.1) or arising under the chapter on sales (see section 41-09-13) or covered in subsection 3.

**SECTION 19. AMENDMENT.** Section 41-09-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**41-09-30. (9-309) Protection of purchasers of instruments, documents, and securities.** Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (section ~~41-03-32~~ 41-03-28) or a holder to whom a negotiable document of title has been duly negotiated (section 41-07-30) or a bona fide purchaser of a security (section 41-08-18) and those holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to those holders or purchasers.

**SECTION 20. AMENDMENT.** Subsection 1 of section 41-09-33 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section ~~41-04-18~~ 41-04-22 with respect to the security interests of collecting banks in items being collected, accompanying documents, and proceeds; section 41-09-03 on security interests related to other jurisdictions; and section 41-09-14 on consignments.

**SECTION 21. AMENDMENT.** Section 47-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-15-01. "Hiring" defined.** Hiring is a contract by which one gives to another the temporary possession and use of personal property, other than goods subject to chapter 41-02.1 or money, for reward, and the latter agrees to return the same to the former at a future time.

**SECTION 22. REPEAL.** Chapters 41-03 and 41-04 and section 41-09-11 of the North Dakota Century Code are repealed.

**SECTION 23. TRANSITION.** Rights and obligations that arose under section 41-09-11 before its repeal remain valid and may be enforced as though this section had not been repealed.

**SECTION 24. EFFECTIVE DATE.** This Act becomes effective on July 1, 1993.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 449

SENATE BILL NO. 2024  
(Legislative Council)  
(Interim Agriculture Committee)

### AGRICULTURAL LIENS

AN ACT to create and enact a new section to chapter 35-17, a new section to chapter 35-30, a new section to chapter 35-31, and a new section to chapter 41-09 of the North Dakota Century Code, relating to the destruction of certain lien documents and facsimile filing; to amend and reenact sections 11-18-14, 35-05-04, 35-17-01, 35-17-03, 35-17-04, 35-30-01, 35-30-02, 35-31-02, subsection 9 of section 41-09-28, sections 41-09-28.1, 41-09-40, 41-09-41, subdivision a of subsection 5 and subsection 8 of section 41-09-42, and sections 41-09-42.1, 41-09-43, and 41-09-46 of the North Dakota Century Code, relating to agister's liens, the establishment of a computerized central notice system and the computerized Uniform Commercial Code central filing system fund, and the filing of security interests and liens; to repeal section 35-17-05 and subsection 10 of section 41-09-28 of the North Dakota Century Code, relating to information to be filed with the secretary of state regarding agister's liens; to provide a penalty; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-18-14. Register of deeds to remove and destroy certain documents - Records to be made. The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in the register's office, and destroy, all seed liens, chattel mortgages, threshing or drying liens, crop production liens, combining liens, agricultural processor's liens, agricultural supplier's liens, agister's liens, mechanic's liens, repairman's liens, unpaid earned insurance premium liens, and sales contracts together with any releases for the same upon which a claim for relief has accrued and which claim for relief is more than ten years old. At the time of destroying the files the register of deeds shall note on the margin of the index opposite the record of each instrument so removed and destroyed the date when the same was destroyed.

SECTION 2. AMENDMENT. Section 35-05-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-05-04. Security agreement not to include other personal property. A security agreement covering specific crops is not valid to create a security interest therein, nor entitled to be filed in the office of the register of deeds or the secretary of state, if the security agreement contains any provision by which a security interest is claimed in any other

personal property. For the purpose of this section, the term "crops" means crops, crop proceeds and products, supplementary price payments and payments made in lieu of crop proceeds, including crop insurance payments, for the period of time authorized in this section, but does not include diversion payments or third-party payments made to producers which are not directly related to crop production or proceeds.

SECTION 3. AMENDMENT. Section 35-17-01 of the North Dakota Century Code is amended and reenacted as follows:

35-17-01. Agister's lien authorized. Any person to whom any ~~horses, mules, cattle, or sheep~~ animal is entrusted by the owner thereof for the purpose of feeding, herding, pasturing, or ranching has a lien upon the ~~horses, mules, cattle, or sheep~~ animals for the amount that may be due for feeding, herding, pasturing, or ranching, and is authorized to retain possession of the ~~horses, mules, cattle, or sheep~~ animal until the amount is paid. ~~These provisions may~~ This section does not be construed to apply to stolen stock.

SECTION 4. AMENDMENT. Section 35-17-03 of the North Dakota Century Code is amended and reenacted as follows:

35-17-03. Agister's lien by filing - Priority of lien. In addition to sections 35-17-01 and 35-17-02, any person to whom any ~~horses, mules, cattle, or sheep~~ animal is entrusted by the owner for the purpose of feeding, herding, pasturing, or ranching, upon filing the statement prescribed in section 35-17-04, is entitled to a lien upon the ~~horses, mules, cattle, or sheep~~ animal for the amount that may be due for feeding, herding, pasturing, or ranching, effective from the date the person entitled to the lien comes into possession of the ~~horses, mules, cattle, or sheep~~ animal. A lien taken pursuant to this section upon anything other than the animal is void. An agister's lien has priority, as to the animals covered by the lien, over all other liens or encumbrances, except agricultural processors' or agricultural suppliers' liens. This section does not apply to stolen stock.

SECTION 5. AMENDMENT. Section 35-17-04 of the North Dakota Century Code is amended and reenacted as follows:

35-17-04. Procedure to obtain lien - Statement filed - Contents - Waiver. Any person entitled to an agister's lien, within ninety days after taking possession of the ~~horses, mules, cattle, or sheep~~ animal, may file in the office of the register of deeds of the in any county in which the owner of the ~~horses, mules, cattle, or sheep~~ resides this state or in the office of the secretary of state, a verified statement containing ~~all of~~ the following information:

1. The number of and a description of the animals subject to the lien and the legal description as to the location of the animals.
2. The name and address of the person for whom the ~~horses, mules, cattle, or sheep~~ animals are kept.
3. The name and address of the lienholder.
4. The price agreed upon for keeping the animals and, if no price was agreed upon, the reasonable value of the services.

5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the animals are kept.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both. If the statement is not filed within ninety days as required by this section, the person entitled to the lien under section 35-17-03 waives the lien.

SECTION 6. A new section to chapter 35-17 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to remove and destroy certain documents. The secretary of state shall remove and destroy liens filed in the secretary of state's office pursuant to this chapter in the manner provided for in section 11-18-14 for the register of deeds.

SECTION 7. AMENDMENT. Section 35-30-01 of the North Dakota Century Code is amended and reenacted as follows:

35-30-01. Agricultural processor's lien authorized. Any person who processes any crop or agricultural product is entitled to a lien upon the crop or product processed for the reasonable value of the services performed. A lien taken pursuant to this section upon anything other than the crop or product processed is void. As used in this chapter, the term "processor" includes persons threshing, combining, drying, or harvesting any crop or agricultural product. The agricultural processor's lien is effective from the date the processing is completed.

SECTION 8. AMENDMENT. Section 35-30-02 of the North Dakota Century Code is amended and reenacted as follows:

35-30-02. Procedure to obtain lien. To obtain an agricultural processor's lien, the person entitled to the lien, within ninety days after the processing is completed, shall file a verified statement in the office of the register of deeds in the any county or counties in which the crop or agricultural product was grown in this state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person for whom the processing was done.
2. The name and address of the processor.
3. A description of the crops or agricultural products and their amount, if known, subject to the lien together with the legal description as to the location where the crops or agricultural products were grown.
4. The price agreed upon for processing, or if no price was agreed upon, the reasonable value of the processing.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service

taxpayer identification number of the person for whom the processing was done.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both.

SECTION 9. A new section to chapter 35-30 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to remove and destroy certain documents. The secretary of state shall remove and destroy liens filed in the secretary of state's office pursuant to this chapter in the manner provided for in section 11-18-14 for the register of deeds.

\* SECTION 10. AMENDMENT. Section 35-31-02 of the North Dakota Century Code is amended and reenacted as follows:

35-31-02. Procedure to obtain lien. To obtain an agricultural supplier's lien, except an agricultural supplier's lien for furnishing petroleum products, the person entitled to the lien, within ninety days after the supplies are furnished or the services performed, shall file a verified statement in the office of the register of deeds of the any county or counties in which the crop, agricultural product, or livestock was grown in this state or in the office of the secretary of state. To obtain an agricultural supplier's lien for furnishing and delivering petroleum products, the person entitled to the lien, within one hundred eighty days after the petroleum products are furnished or delivered, shall file a verified statement in the office of the register of deeds of any county in the state or in the office of the secretary of state. The statement must contain the following information:

1. The name and address of the person to whom the supplies were furnished.
2. The name and address of the supplier.
3. A description of the crops, agricultural products, or livestock and their amount or number, if known, subject to the lien together with the legal description as to the location of the crops, agricultural products, or livestock.
4. A description and value of the supplies furnished.
5. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person to whom the supplies were furnished.

The secretary of state shall prescribe one form that can be used to obtain a lien under this section or gain protection under the central notice system, or both.

SECTION 11. A new section to chapter 35-31 of the North Dakota Century Code is created and enacted as follows:

- \* NOTE: Section 35-31-02 was also amended by section 1 of House Bill No. 1538, chapter 369.

Secretary of state to remove and destroy certain documents. The secretary of state shall remove and destroy liens filed in the secretary of state's office pursuant to this chapter in the manner provided for in section 11-18-14 for the register of deeds.

SECTION 12. AMENDMENT. Subsection 9 of section 41-09-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or otherwise; which includes, ~~but is not limited to,~~ liens for threshing; crop or agricultural product processing; crop production; fertilizer, farm chemicals, and seed; agricultural supplies; and landlord's lien; intends to impose liability for such security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list or lists distributed by the secretary of state pursuant to subsection 4 of section 41-09-46. In order to appear on the list or lists, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains ~~all of the following~~ information:

- a. ~~The name and address of the person engaged in farming operations.~~
- b. ~~The county of residence of the person engaged in farming operations.~~
- c. ~~The social security number of the person engaged in farming operations or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the debtor except that the social security number is not required for a crop, agricultural processor's, or agricultural supplier's lien obtained under chapter 35-30 or 35-31 unless the social security number is required for certification of the central notice system pursuant to section 1324 of the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631].~~
- d. ~~The name and address of the secured party or lienholder.~~
- e. ~~A description of the crops or livestock and their amount, if known, subject to the security interest or lien.~~
- f. ~~The legal description as to the location of the crops or livestock.~~
- g. ~~The signature of the debtor against whom the loan or lien is filed is not required unless the signature is required for certification of the central notice system pursuant to section 1324 of the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631].~~
- h. ~~The signature of the secured party or lienholder.~~

A form filed pursuant to this section is effective for a period of five years. The effectiveness and continuation of the form filed is to be treated as if it were filed as a financing statement prescribed by the secretary of state under section 41-09-41 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

SECTION 13. AMENDMENT. Section 41-09-28.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-28.1. Transition provision to computerized central notice system.

1. Until January 1, 1986, a merchant who purchases or commission merchant who sells farm products for another for a fee or commission takes free of security interest created by the seller only if the requirements of subsection 7 of section 41-09-28 are met.
2. Until December 1, 1985, copies of security documents filed by secured parties or lienholders with the register of deeds along with the additional information to be filed pursuant to subsection 9 of section 41-09-28 may be filed with the secretary of state and such documents shall be effective for five years under the central notice system.
3. The secretary of state or a designee shall mail the first lists for crops and livestock created under the central notice system five business days prior to their effective day in January 1986. Any security document filed by secured parties or lienholders before January 1, 1992, lapses on June 30, 1992, unless after January 1, 1992, but before June 30, 1992, there is filed in the office of the secretary of state a copy of the security document, along with the additional information to be filed pursuant to section 35-17-04, 35-30-02, 35-31-02, or 41-09-40, and all related documents on file. A refiled document must be filed in the office in which the original document was first filed. The order of perfection is governed by the date and the time of filing of the original financing statement or statement of lien. Refiling a lien pursuant to this section does not affect the priority of that lien. No filing fees may be charged or collected for the refiling of any security document pursuant to this section. At the time of the refiling of any security document pursuant to this section, the fee for filing and indexing a termination statement pursuant to subsection 3 of section 41-09-43 must be paid, unless that fee was paid with the original filing of the security document.

SECTION 14. AMENDMENT. Section 41-09-40 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-40. (9-401) Place of filing - Erroneous filing - Removal of collateral.

1. The proper place to file in order to perfect a security interest is as follows:

- a. When the collateral is farm products; or growing crops; or accounts or general intangibles arising from or relating to the sale of farm products by a farmer; or consumer goods; then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept.
  - b. When the collateral is timber to be cut, or is minerals or the like (including oil and gas), or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.
  - c. When the collateral is equipment used in farming operations; then in the office of the register of deeds in the county of the debtor's residence and in the office of the secretary of state; or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the equipment is kept.
  - d. b. In all other cases, in the office of the register of deeds in any county in this state or in the office of the secretary of state.
2. A filing, ~~other than a filing made pursuant to subdivision c of subsection 4, which that~~ is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement. ~~A filing made pursuant to subdivision c of subsection 4 in an improper county is nevertheless effective if the creditor perceived the place in which the creditor filed to be the debtor's county of residence and the creditor filed in the office of the secretary of state.~~
  3. Filing which A filing that is made in the proper place in this state continues effective even though ~~the debtor's residence or place of business or the~~ location of the collateral or its use, whichever controlled the original filing, is thereafter changed.
  4. If collateral is brought into this state from another jurisdiction, the rules stated in section 41-09-03 determine whether filing is necessary in this state.
  5. Notwithstanding subsections 1, 2, 3, and 4, and subject to subsection 3 of section 41-09-23, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is in the office of the secretary of state. This filing constitutes a fixture filing (section 41-09-34) as to the collateral described therein which is or is to become fixtures.



6. For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office, if it has more than one place of business.

SECTION 15. AMENDMENT. Section 41-09-41 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-41. (9-402) Formal requisites of financing statement - Amendments - Mortgage as financing statement.

1. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral; except a financing statement that is to be filed to gain protection under the central notice system must include any additional information required by the Food Security Act of 1985 [Pub. L. 99-198; 99 Stat. 1535; 7 U.S.C. 1631], as prescribed by the secretary of state. The secretary of state shall prescribe one form that can be used to perfect a security interest in farm products or gain protection under the central notice system, or both. In addition, to be sufficient a financing statement filed after July 1, 1987, must include either the social security number or federal tax identification number of the debtor. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34), and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection 5. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.
2. A financing statement ~~which~~ that otherwise complies with subsection 1 is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:
  - a. Collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. The financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances;
  - b. Proceeds under section 41-09-27 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral;

- c. Collateral as to which the filing has lapsed; or
- d. Collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection 7).

3. A form substantially as follows is sufficient to comply with subsection 1:

Name of debtor (or assignor) -----  
 Address -----  
 Debtor's social security number or federal tax  
 identification number -----  
 Name of secured party (or assignee) -----  
 Address -----

a. This financing statement covers the following types (or items) of property:

(Describe) -----

b. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe real estate) -----

c. (If applicable) The above goods are to become fixtures on:

(Describe real estate) -----

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record.) The name of a record owner is -----.

d. (If products of collateral are claimed)

Products of the collateral are also covered.

(use ) -----  
 whichever ) Signature of Debtor (or Assignor)  
 is ) -----  
 applicable) ) Signature of Secured Party (or  
 Assignor)

4. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

5. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection 5 of section 41-09-03, or a financing statement filed as a fixture filing (section 41-09-34) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the

real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

6. A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:
  - ↔ a. The goods are described in the mortgage by item or type;
  - ↔ b. The goods are or are to become fixtures related to the real estate described in the mortgage;
  - ↔ c. The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
  - ↔ d. The mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

7. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name, or in the case of an organization, its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.
8. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.
9. A financing statement covering crops growing or to be grown must show that it covers crops and where the debtor is not a transmitting utility the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state.
10. A financing statement filed to gain protection under the central notice system must be amended within three months of a material change to reflect that change. The amended financing statement must be signed by both the debtor and secured party and filed in the same manner as the original financing statement.

SECTION 16. AMENDMENT. Subdivision a of subsection 5 and subsection 8 of section 41-09-42 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

a. For filing and indexing any statement under the Uniform Commercial Code, five dollars, and when a nonstandard statement is presented for filing, an additional fee of five dollars plus one dollar per page must be made. No additional fee may be charged if the form is filed also to gain protection under the central notice system.

8. The fee secretary of state shall establish fees for filing a form with the secretary of state pursuant to subsection 9 of section 41-09-28 is not to exceed five dollars. This fee may not directly be charged to the person to whom the loan is made inputting data to, and for obtaining computer access to the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base, for receiving printouts, and for other services provided through the computerized system.

SECTION 17. AMENDMENT. Section 41-09-42.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-42.1. Creation of special fund - Fees collected by secretary of state ~~Deposit in general fund.~~ A special fund is hereby established in the state treasury to be known as the computerized Uniform Commercial Code central filing system fund. Any fees collected by the secretary of state pursuant to subsections 5, 8, 9, 10, and 11 of section 41-09-42 must be deposited in the state general fund computerized Uniform Commercial Code central filing system fund and may be spent within the limits of legislative appropriations for the purpose of implementing, maintaining, updating, and administering the computerized Uniform Commercial Code central filing data base system, the computerized central notice system, and the computerized statutory lien data base system. This fund is not subject to section 54-44.1-11.

SECTION 18. A new section to chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

Facsimile copies of security agreements, financing statements, and other documents permitted - Penalty for false filing. The secretary of state or the register of deeds should treat a facsimile copy of a security agreement, financing statement, or other document and the signatures on the facsimile copy in the same manner as an original for purposes of sections 41-09-41 and 41-09-42, if the person who received the facsimile copy receives the original document, or a carbon, photographic, or other reproduction if allowed under subsection 1 of section 41-09-41, within five working days of receipt of the facsimile copy. The date of filing relates back to the date of receipt of the facsimile copy. The facsimile copy must be legible and the same size as the original document. During the five-day period, the facsimile copy constitutes constructive notice of the original document. If the required document is not received within five working days of receipt of the facsimile copy, the filing of the facsimile copy is void. A person who files a false document by a facsimile copy is liable to the party aggrieved for treble damages resulting from the filing of the false document.

\* SECTION 19. AMENDMENT. Section 41-09-43 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-43. (9-404) Termination statement.

1. If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases where there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must send to the debtor on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection 2 of section 41-09-44, including payment of the required fee, if any. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be, the secured party is liable to the debtor for one hundred dollars, and in addition, for any loss caused to the debtor by such failure.
2. On presentation to the filing officer of such a termination statement, he must the filing officer shall note it in the index. If he the filing officer has received the termination statement in duplicate, he the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment, and statement of release, he the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if he the filing officer has no such record, he the filing officer may remove them from the files at any time after one year after receipt of the termination statement.
3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, is five dollars. For any financing statement filed after the effective date of this section, the fee must be paid at the time the fee for filing the financing statement is paid.

SECTION 20. AMENDMENT. Section 41-09-46 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 41-09-43 was also amended by section 3 of Senate Bill No. 2129, chapter 624.

41-09-46. (9-407) Information from filing officer - ~~Central~~  
Computerized central notice system - Secretary of state to compile lists for  
crops and livestock - Distribution of lists.

1. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer ~~shall~~ upon request shall note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.
2. Upon request of any person, the filing officer shall issue ~~his~~ a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment ~~thereof~~ and if there is, giving the date and hour of filing of each ~~such~~ statement and the names and addresses of each secured party ~~therein~~. The fee for ~~such a~~ this certificate ~~shall be~~ is as provided by section 41-09-42. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a fee as provided by section 41-09-42.
3. The secretary of state shall develop and implement a computerized central notice system which ~~shall~~ must contain the information filed with ~~his~~ the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to subsection 9 of section 41-09-28 sections 35-17-04, 35-30-02, 35-31-02, and 41-09-40. The system must connect each registers of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-17-04, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central notice system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which ~~contains~~ contain the information as filed on the forms pursuant to subsection 9 of section 41-09-28 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list ~~shall~~ must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If ~~a request is made~~ requested, the lists ~~shall~~ must be in printed

form and on microfiche. Each list ~~shall~~ must conspicuously note its effective date.

4. The lists prepared pursuant to subsection 3 ~~shall~~ must be distributed monthly by mail at least five business days in advance of their effective date. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 41-09-42.
5. Upon a verbal request of any person, the secretary of state or a designee or a register of deeds shall verbally provide information contained on the list generated through the computerized central notice system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central notice system to lose its federal certification. The fee for a verbal request and such a certificate ~~shall~~ must be as provided by section 41-09-42.
6. A computer printout from the computerized central notice system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

SECTION 21. REPEAL. Section 35-17-05 of the North Dakota Century Code and subsection 10 of section 41-09-28 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 22. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are appropriated out of any moneys in the computerized Uniform Commercial Code central filing system fund in the state treasury, not otherwise appropriated, to the secretary of state for the purpose of implementing, maintaining, updating, and administering the computerized Uniform Commercial Code central filing data base system, the computerized central notice system, and the computerized statutory lien data base system for the period beginning with the effective date of this Act and ending June 30, 1993, as follows:

Salaries and wages	\$ 212,959
Information services	343,900
Operating expenses	186,210
Equipment	269,600
Grants, benefits, and claims	418,000
Contingency	53,713
Total special funds appropriation	<u>\$1,484,382</u>

SECTION 23. EFFECTIVE DATE. Sections 17, 19, and 22 of this Act become effective on April 1, 1991, and sections 1 through 16, 18, 20, and 21 of this Act become effective on January 1, 1992.

SECTION 24. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 450

HOUSE BILL NO. 1479  
 (Representatives Rydell, Jensen, Kroeber)  
 (Senators Maxson, Lips, Kelly)

### BOARD OF PODIATRIC MEDICINE

AN ACT to create and enact six new sections to chapter 43-05 of the North Dakota Century Code, relating to the board of podiatric medicine; to amend and reenact sections 43-05-01, 43-05-03, 43-05-04, 43-05-05, 43-05-06, 43-05-09, 43-05-10, 43-05-11, 43-05-12, 43-05-13, 43-05-14, 43-05-15, 43-05-16, and 43-05-17 of the North Dakota Century Code, relating to regulation of the practice of podiatric medicine; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-01 of the North Dakota Century Code is amended and reenacted as follows:

43-05-01. Definitions. For the purposes of In this chapter, unless the context or subject matter otherwise requires:

1. "Podiatrist" shall mean one who examines, diagnoses, and treats ailments of the human foot by medical, surgical, and other means, except amputation of the foot, which can be done with or without a local anesthetic. When general anesthesia is utilized, it must be under the direction of a licensed anesthesiologist.
- 2- "Board" shall mean means the North Dakota board of registry in podiatry podiatric medicine.
2. "Clinical residency" means a formal, structured postdoctoral training program approved by the board which is sponsored by and conducted in an accredited institution approved by the board or conducted by a college of podiatric medicine accredited and approved by the council on podiatric medical education, American podiatric medical association, or other accrediting agency approved by the board. The term also includes a preceptorship approved by the board until January 1, 1995.
3. "False or misleading statement or advertising" includes a statement, claim, or advertising that:
  - a. Contains a misrepresentation of fact;
  - b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
  - c. Is intended or is likely to create false or unjustified expectations of favorable results;



- d. Appeals to an individual's anxiety in an excessive or unfair way;
  - e. Contains material claims of superiority that cannot be substantiated;
  - f. Misrepresents a podiatrist's credentials, training, experience, or ability;
  - g. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived; or
  - h. Represents that a manifestly incurable condition, sickness, disease, or injury can be cured.
4. "Health care facility" means a medical hospital, skilled nursing care facility, intermediate care facility, basic care facility, boarding house, or swing-bed hospital approved to furnish long-term care service, or any other facility licensed to provide health care services.
  5. "Podiatric medicine" means the profession of the health services concerned with the diagnosis and treatment of conditions affecting the human foot and ankle including local manifestations of systemic conditions by all appropriate systems and means and includes the prescribing or administering of drugs or medications necessary or helpful to that profession.
  6. "Podiatrist" means a person who is qualified to practice podiatric medicine in this state.
  7. "Preceptorship" means a formal, structured postdoctoral training program approved by the board and conducted by a podiatrist primarily in an office setting and controlled and supervised by a college of podiatric medicine accredited by the council on podiatric medical education, American podiatric medical association, or another accrediting agency approved by the board.
  8. "Provider" means a licensed person, homecare provider, medical or health services clinic, hospital, or health care facility, organization, institution, or agency that furnishes health care services.

SECTION 2. AMENDMENT. Section 43-05-03 of the North Dakota Century Code is amended and reenacted as follows:

43-05-03. Board of ~~registry in podiatry~~ podiatric medicine - Appointment of members - Term of office - Qualifications - Vacancies - Duties - Quorum - Records. The board of ~~registry in podiatry shall consist of four~~ podiatric medicine consists of five persons appointed by the governor for a term of four years each with the terms of office so arranged that one term only ~~shall expire~~ expires on the thirteenth day of June of each year. ~~Three~~ Four members of the board ~~shall~~ must hold doctor of podiatric medicine degrees and ~~shall~~ must have practiced ~~podiatry~~ podiatric medicine in this state for at least two years ~~prior to~~ before their appointment, and the ~~fourth~~ fifth person ~~shall~~ must be a doctor of medicine, who ~~shall hold~~ holds

a doctor of medicine degree and ~~shall have~~ has practiced in this state for at least two years ~~prior to his~~ before the appointment.

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold ~~his~~ office until ~~his~~ a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

A majority of the board constitutes a quorum to transact business, make any determination, or take any action. The board shall keep a record of its proceedings and of applications for licenses. Applications and records must be preserved for at least six years beyond the disposition of the application or record or the last annual registration of the licensee, whichever is longer.

SECTION 3. AMENDMENT. Section 43-05-04 of the North Dakota Century Code is amended and reenacted as follows:

43-05-04. Meetings - When held - Officers. The board shall hold an annual meeting and at ~~such~~ that meeting shall elect from its members a president, vice president, and secretary-treasurer. The president of the board or any two members of the board may call a special meeting at any time if written notice of the meeting is given to all the members. At any special meeting at which ~~all members are in attendance~~ a quorum is present a waiver of the notice of the meeting may be executed in lieu of the original notice. The officers shall perform such duties as the board prescribes. If a member of the board is absent from two consecutive regular or special meetings, the board may declare that member's position to be vacant. The governor shall fill all vacancies.

SECTION 4. AMENDMENT. Section 43-05-05 of the North Dakota Century Code is amended and reenacted as follows:

43-05-05. Secretary-treasurer - Bond - Allowance. The secretary-treasurer of the board ~~shall~~ must be bonded for the faithful discharge of ~~his~~ the duties of the office in the ~~penal~~ sum of not less than one thousand dollars. The secretary of the board shall receive such allowance for clerical and other expenses of the board as determined by the board.

SECTION 5. AMENDMENT. Section 43-05-06 of the North Dakota Century Code is amended and reenacted as follows:

43-05-06. Compensation of members of board. Each member of the board shall receive ~~ten fifty~~ dollars per day for each day employed in the actual discharge of ~~his~~ the duties of the board, and ~~his~~ the member's necessary expenses incurred in connection therewith. The mileage and travel expense allowed ~~shall~~ may not exceed the amount provided for in section 54-06-09.

SECTION 6. AMENDMENT. Section 43-05-09 of the North Dakota Century Code is amended and reenacted as follows:

43-05-09. License to practice podiatry required.

1. No A person in this state shall may not practice podiatry nor hold himself out to be a podiatrist, nor assume nor attempt to act as a

podiatrist, podiatric medicine unless he that person first has obtained a license or permit to do so.

2. A person may not do any of the following unless that person holds a valid license or permit:
  - a. Advertise, hold out to the public, or represent in any manner that that person is authorized to practice podiatric medicine.
  - b. Use the designation "doctor of podiatric medicine", "podiatrist", "D.P.M.", "podiatric physician", "chiroprapist", "foot specialist", or "foot doctor", or use any title, degree, letters, symbol, or words that would tend to lead the public to believe that that person is authorized to practice or assume duties incident to the practice of podiatric medicine.
3. A license to practice podiatric medicine is effective for one year subject to the terms and conditions for renewal established by the board.

SECTION 7. AMENDMENT. Section 43-05-10 of the North Dakota Century Code is amended and reenacted as follows:

43-05-10. Application - Examination fee. In order to To obtain a license to practice as a doctor of podiatric medicine, a person must submit an application shall be made and any other documentation required by the board to the board through the secretary treasurer in the manner prescribed by the board. The applicant shall submit evidence that he the applicant has the required qualifications and shall pay to the secretary treasurer board a fee of one hundred fifty not more than five hundred dollars. The application shall be filed on or before the first day of June.

SECTION 8. AMENDMENT. Section 43-05-11 of the North Dakota Century Code is amended and reenacted as follows:

43-05-11. Qualifications of licensee. An applicant for a license to practice podiatry shall podiatric medicine must possess the following qualifications:

1. Be at least eighteen years of age;
2. Be of good moral character;
3. Be a graduate of a college of podiatric medicine satisfactory to the board podiatric medical school approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant factors.

All persons holding a license to practice podiatry podiatric medicine in this state upon on July 1, +975 1991, shall continue to be eligible for a license to practice podiatry podiatric medicine under this chapter.

Upon renewal of any license, the podiatry board shall have the power to may require the applicant to show sufficient proof of continuing medical education since the last application, which may include seminars or podiatry meetings. The podiatry board shall have the discretion to may waive said the

continuing education requirements in case of illness or other extenuating circumstances.

An applicant for a license must not have engaged in conduct warranting disciplinary action against a licensee or permittee in this state or another state. The board may issue a license or permit to an applicant who has engaged in conduct warranting disciplinary action if the board determines that the public will be protected through the issuance of a license or permit with conditions and limitations considered appropriate by the board. Applicants graduating after the effective date of this Act from a podiatric medical school shall present to the board evidence of the successful completion of a program of clinical residency.

SECTION 9. AMENDMENT. Section 43-05-12 of the North Dakota Century Code is amended and reenacted as follows:

43-05-12. Examination - ~~Subjects covered~~ - ~~Mark required~~ - ~~When given Temporary permit.~~ Before an applicant may be licensed as a doctor of podiatry, he shall pass satisfactorily an examination in the following subjects, limited in their scope to the treatment of the human foot:

1. ~~Basic sciences.~~
2. ~~Physical diagnosis.~~
3. ~~Orthopedics.~~
4. ~~Materia medica.~~
5. ~~Emergencies.~~
6. ~~Foot surgery.~~
7. ~~Any other subjects as may be required by the board.~~

The minimum requirement for the license shall be a general average of seventy five percent. Regular examinations shall be given at such time as the board may designate. If an applicant shall pass the examination given under this chapter, he shall be entitled to a license. In lieu of the examination herein provided for, the board may accept the successful completion of the examination administered by the National Board of Podiatry Examiners as meeting the aforesaid requirements.

1. The board may issue a license or permit to an applicant who has received a passing score on each section of the national board of podiatric medical examiners licensing examination or such other licensing examination as determined by the board. The board shall determine the requirements for a passing score. An applicant shall appear in person before the board or its designated representative to complete an oral practical examination and show that the applicant satisfies the requirements for licensure. The board may accept a national clinical examination prepared and graded by the national board of podiatric medical examiners in lieu of the oral practical examination. The board may establish the procedures or requirements for the applicant's personal presentation and the subject matter of the oral practical examination.

2. The board may issue a temporary permit to practice podiatric medicine to a person engaged in a clinical residency or preceptorship for a period not to exceed twelve months if the person meets all the conditions and qualifications for licensure established by this chapter and rules of the board. The applicant for a temporary permit must submit a fee of not more than two hundred fifty dollars, as determined by the board.

SECTION 10. AMENDMENT. Section 43-05-13 of the North Dakota Century Code is amended and reenacted as follows:

43-05-13. Reexamination when applicant fails in first examination. Any applicant who fails ~~in~~ the examination and is refused a license, within one year after such refusal, may be reexamined upon paying an additional fee of ~~ten~~ three hundred dollars. Only one ~~such~~ reexamination ~~shall exhaust~~ exhausts the applicant's privilege under the original application.

SECTION 11. AMENDMENT. Section 43-05-14 of the North Dakota Century Code is amended and reenacted as follows:

43-05-14. When license issued without examination. The board may issue a license without examination to a podiatrist of another state or Canadian province if:

1. ~~Such~~ The other state or Canadian province grants like privileges to podiatrists of this state;
2. ~~Such~~ The other state or Canadian province maintains equal statutory requirements for practicing ~~podiatry~~ podiatric medicine;
3. ~~Such~~ The applicant pays a fee of ~~seventy-five~~ not more than five hundred dollars as determined by the board;
4. ~~Such~~ The applicant has been engaged legally in the active practice of ~~podiatry~~ podiatric medicine for at least two years immediately preceding the date of ~~his~~ application;
5. The applicant presents satisfactory evidence to the board indicating the current status of a license to practice podiatric medicine which has been issued by the proper agency in another state or Canadian province;
6. The applicant has not had a license suspended or revoked, or has not engaged in conduct warranting or which would have warranted disciplinary action against a licensee if the conduct was committed in this state or elsewhere, or has not been subjected to disciplinary action in another state or Canadian province. If an applicant does not satisfy the requirements of this subsection, the board shall refuse to issue a license unless the board determines that the public will be protected through issuance of a license with conditions or limitations considered appropriate by the board; and
7. The applicant submits with the application the following information for the five-year period before the date of filing the application:

- a. The name and address of the applicant's professional liability insurance carrier in the other state or Canadian province; and
- b. The number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

SECTION 12. AMENDMENT. Section 43-05-15 of the North Dakota Century Code is amended and reenacted as follows:

43-05-15. Renewal of license - Fee - Established by board - Failure to pay - Reinstatement. Each licensed and practicing podiatrist in this state shall pay ~~an~~ the annual renewal ~~uniform~~ license fee to be established by the board, ~~which~~. The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not to exceed one hundred fifty five hundred dollars. The fee must be paid on or before the first day of June of each year and shall be the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of ~~said~~ the fee. If the renewal fee is not paid within six months after June first of each year the date established by the board, the license of the delinquent licensee ~~shall~~ must be revoked and ~~shall~~ may not be reissued except upon a new application and the payment of a sum equal to such the renewal fee ~~as~~ established by the board plus twenty-five dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

SECTION 13. AMENDMENT. Section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

43-05-16. Grounds for ~~revoking or refusing to grant license disciplinary action~~. After notice and due hearing the board may refuse to renew a license to practice podiatry or may revoke an existing license for any one or more of the following causes:

- 1- ~~Prescribing for or treating any disease or defect of any part of the human body which in the opinion of the board is outside the scope of the practice of podiatry.~~
- 2- ~~The use of untruthful or improbable statements to patients or in his advertisements.~~
- 3- ~~The willful betrayal of professional secrets of a patient.~~
- 4- ~~False statement of an applicant in an application for a license or an affidavit connected with an application.~~
- 5- ~~Conviction of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as a podiatrist, or the board determines that the holder, following his conviction of any offense, is not sufficiently rehabilitated under section ~~42-1-33-02-1~~.~~
- 6- ~~Proof of the use by the applicant or licensee of morphine, opium, cocaine, or any other substance or drug having a similar effect.~~
- 7- ~~Giving away or prescribing any substance or compound containing morphine, opium, cocaine, or similar drug; exchanging the same for~~

money or its equivalent; or vending or bartering the same for other than legal and legitimate therapeutic purposes.

It shall be unlawful for any person licensed under this chapter to maintain his or her professional office in conjunction or relation with any business other than those engaged in the practice of the medical sciences. The board of registry in podiatry may revoke the license of anyone violating this provision.

1. The board may refuse to grant a license or permit or may impose disciplinary action as described in this chapter against any podiatrist. The following conduct, whether occurring in this state or elsewhere, is prohibited and is a basis for disciplinary action:
  - a. Failure to demonstrate the qualification or satisfy the requirements for a license or permit under this chapter or rules of the board.
  - b. Obtaining a license or permit by fraud or cheating or attempting to subvert the licensing or permit examination process, the use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the license or permit requirements.
  - c. Conviction, during the previous five years, of a misdemeanor or felony reasonably related to the practice of podiatric medicine, or determined by the board to have a direct bearing upon a person's ability to serve the public as a podiatrist. A license may not be withheld contrary to chapter 12.1-33.
  - d. Revocation, suspension, restriction, limitation, or other disciplinary action against the person's podiatric medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or failure to report to the board that the person has been refused a license by another state or jurisdiction.
  - e. Advertising that is false or misleading, or the making of any false or misleading statement about the podiatrist's skill, training, experience, or ability or the efficacy of any treatment or remedy.
  - f. Violating a rule adopted by the board; an order of the board; any provision of this chapter; any action, stipulation, condition or agreement imposed by the board; a state or federal law that relates to the practice of podiatric medicine; or a state or federal narcotics or controlled substance law.
  - g. Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public; demonstrating a willful, careless, or negligent disregard for the health, welfare, or safety of a patient; or podiatric medical practice that is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety regardless of whether an actual injury is proved.

- h. Failure to supervise a preceptor or resident;
- i. Aiding or abetting an unlicensed, incompetent, or impaired person in the practice of podiatric medicine.
- j. Adjudication by a court of competent jurisdiction as mentally incompetent, mentally ill, chemically dependent, a person dangerous to the public, or a person who has a psychopathic personality.
- k. Engaging in unprofessional conduct that includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice.
- l. Inability to practice podiatric medicine with reasonable skill and safety to patients because of physical or mental illness, chemical dependency, or as a result of any mental or physical condition or disability.
- m. Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.
- n. Improper management of medical records.
- o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or the payment or receipt, directly or indirectly, of any fee, commission, rebate or other compensation for services not actually or personally rendered.
- p. Engaging in abusive or fraudulent billing practices.
- q. Habitual use of, or becoming addicted or habituated to, alcohol or drugs.
- r. Prescribing, administering, or distributing a drug for other than medically accepted therapeutic purposes, experimental, or investigative purposes authorized by a state or federal agency.
- s. Engaging in sexual misconduct, sexual abuse, or exploitation with or of a patient; conduct that may reasonably be interpreted by the patient as sexual; or in verbal behavior which is seductive or sexually demeaning to a patient.
- t. The failure to furnish the board or representatives information legally requested by the board.
- u. A continued pattern of inappropriate care as a podiatrist.
- v. The practice of podiatric medicine under a false or assumed name other than a partnership name containing the names of one or more of the licensed partners.
- w. Maintaining a professional office in conjunction or relation with any business not engaged in the practice of the medical sciences.



- x. Treating any disease, sickness, illness, malady, or defect that is outside the scope of the practice of podiatric medicine.
- 2. In disciplinary actions alleging a violation of subdivision c or d of subsection 1, a copy of the judgment or proceeding under the seal of the clerk of court or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of the contents of that judgment or proceeding.
- 3. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses or permits together with the evidence offered.

SECTION 14. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Forms of disciplinary action - Dates - Automatic suspensions - Reissuance.

- 1. When the board finds, pursuant to chapter 28-32, that a podiatrist has violated this chapter or a rule of the board, the board may do one or more of the following:
  - a. Revoke the license or permit.
  - b. Suspend the license or permit.
  - c. Institute probation with or without any of the following terms:
    - (1) Impose limitations or conditions on the podiatrist's practice of podiatric medicine;
    - (2) Impose retraining or rehabilitation requirements;
    - (3) Require practice under supervision;
    - (4) Condition the continued practice on demonstration of knowledge or skills by an appropriate examination or other review of skill and competence.
  - d. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for the cost of the investigation and proceeding.
  - e. Order the podiatrist to provide unremunerated professional service under supervision at a designated public hospital, nursing home, clinic, or other health care facility or institution.
  - f. Reprimand the podiatrist.
  - g. Censure the podiatrist.
  - h. Send the podiatrist a letter of concern.

SECTION 15. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Suspension or revocation of license.

1. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license or permit of a podiatrist if the board finds as a matter of probable cause based on verified evidence that the podiatrist has violated this chapter or a rule of the board and that continued practice by the podiatrist would create or be likely to result in a serious and imminent risk of harm to the public. The ex parte temporary suspension order is effective upon written notice to the podiatrist, specifying the law or rule violated. The ex parte temporary suspension remains in effect until the board issues a final order in the matter after a hearing unless otherwise ordered by a district court. When the board issues the ex parte temporary suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to chapter 28-32. The hearing must be scheduled to begin no later than sixty days after the issuance of the ex parte temporary suspension. Within three days after the issuance of the ex parte suspension order, the board shall serve the podiatrist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing. The podiatrist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of this appeal, the district court shall decide whether probable cause reasonably requires the temporary suspension to adequately protect the public interests. The court shall give priority to the appeal for prompt disposition thereof. Unless ordered by the district court, an appeal by the podiatrist of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary suspension.
2. A suspension, revocation, condition, limitation, qualification, or restriction of a license or permit is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, otherwise orders.
3. A license or permit to practice podiatric medicine is automatically suspended if a guardian of the person of a licensee or permittee is appointed by order of a court under chapter 30.1-28 or other similar provisions in this state or elsewhere for reasons other than the minority of the licensee or permittee, or the licensee or permittee is committed by order of a court under chapter 25-03.1 or other similar provisions of law in this state or elsewhere. The license or permit remains suspended until the licensee or permittee is restored to capacity by a court and, upon petition by the licensee or permittee, the suspension is terminated by the board after a hearing.
4. The board may restore and reissue a license or permit to practice podiatric medicine and may impose as a condition of the license or permit any disciplinary or corrective measure.
5. The board may revoke the license of any podiatrist who fails to renew a license. A revocation may occur after six months from the date when all renewal fees and other conditions must be paid or

completed and be in effect before any hearing upon written notice to the podiatrist of the revocation. A hearing must be held within sixty days of the service of the notice of revocation upon the podiatrist.

SECTION 16. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Podiatrist cooperation. A podiatrist or applicant for license under this chapter who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by the board relating to the subject of the investigation and providing copies of patient medical records or other documentation to assist the board in its investigation. The board shall pay for the copies requested. If the board does not have written consent from a patient permitting access to the patient's records, the podiatrist or applicant for license shall delete any data in the record that identifies the patient before providing the record to the board.

SECTION 17. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Mental examination - Access to medical data.

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivisions l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or chemical dependency evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or chemical dependency examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence, unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or a chemical dependency evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivisions l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance

company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

SECTION 18. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Reporting obligations.

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter may report the violation to the board.
2. A hospital, clinic, or other health care institution, facility, organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition a podiatrist's privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action. The hospital, clinic or other health care facility, institution, or organization shall also report the resignation of any podiatrist before the conclusion of any disciplinary proceeding, or before the commencement of formal charges but after the podiatrist had knowledge that formal charges were contemplated or in preparation. No report is required of a podiatrist voluntarily limiting practice at a hospital if the podiatrist notifies all hospitals at which the podiatrist has privileges of the voluntary limitation and the reasons for it.
3. Four times a year, as prescribed by the board, each insurer providing professional liability insurance to podiatrists shall submit to the board a report concerning any podiatrist against whom podiatric medical malpractice settlements or awards have been made. The report must contain at least the following information:
  - a. The total number of podiatric malpractice settlements or awards made to the plaintiff.
  - b. The date the podiatric malpractice settlements or awards to the plaintiff were made.
  - c. The allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff.
  - d. The dollar amount of each podiatric malpractice settlement or award.
  - e. The regular address of the practice of the podiatrist against whom an award was made or with whom a settlement was made.
  - f. The name of the podiatrist against whom an award was made or with whom a settlement was made.

In addition, the insurance company shall report to the board any information it has that tends to substantiate a charge that a podiatrist may have engaged in conduct prohibited under this chapter.

4. The clerks of court of the district courts or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a podiatrist is mentally ill; mentally incompetent; chemically dependent; guilty of a felony; guilty of a violation of federal or state narcotics laws or controlled substances acts; guilty of an abuse or fraud under medicare, medicaid, or medical assistance laws or rules; appoints a guardian of the podiatrist; or provides for the civil commitment of a podiatrist.
5. Reports required by this section must be submitted no later than thirty days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

SECTION 19. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Board immunity and privileged communications.

1. No member of the board, its committees, its employees, or its staff is liable for civil damages or subject to criminal prosecution for any action undertaken or performed within the scope of the functions of the board when acting without malice or gross negligence and in the reasonable belief the action was warranted.
2. Every communication, oral or written, made by or on behalf of any person, institution, agency, or organization to the board or to any person designated by the board to investigate or otherwise hear matters relating to any disciplinary action, is privileged. No action or proceeding, civil or criminal, is permitted against any person, institution, agency, or organization for submitting a report to the board under section 18 of this Act. For any report or communication not required by section 18 of this Act, no action or proceeding, civil or criminal, is permitted against a person, institution, agency, or organization, except upon proof that the communication or report was made with malice.
3. The protections afforded in this section do not prohibit a respondent or a respondent's legal counsel from exercising the respondent's constitutional right of due process under the law, or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.

SECTION 20. AMENDMENT. Section 43-05-17 of the North Dakota Century Code is amended and reenacted as follows:

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

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 451

SENATE BILL NO. 2138  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Chiropractic Examiners)

### CHIROPRACTIC PRACTICE DEFINED

AN ACT to amend and reenact subsection 2 of section 43-06-01 of the North Dakota Century Code, relating to the definition of the practice of chiropractic.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-06-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "The practice of chiropractic" ~~means the~~ includes:
  - a. The examination, evaluation, and diagnosis, by means including X-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor, preparatory to the treatment of patients, and the;
  - b. The treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature, and includes the;
  - c. The practice of physiotherapy, electrotherapy, hydrotherapy, and all;
  - d. All other procedures taught by chiropractic colleges, accredited by the council on chiropractic education or its successor, but; and
  - e. The rating and reporting of any permanent impairment of function and the providing of professional opinions regarding any matter included in this definition of practice of chiropractic as set out herein.

The practice of chiropractic does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

Approved March 15, 1991  
Filed March 15, 1991

## CHAPTER 452

HOUSE BILL NO. 1429  
(Representatives Bodine, Mahoney, Gorman)  
(Senator Tennefos)

**CONTRACTOR LICENSE RENEWAL**

AN ACT to amend and reenact section 43-07-10 of the North Dakota Century Code, relating to renewals of contractors' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew. Any license issued under ~~the provisions of~~ this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal ~~thereof. For the purpose of obtaining such.~~ To obtain a certificate of renewal, the licensee shall file with the registrar an application ~~therefor, which application shall be~~ accompanied by two copies of a list in duplicate showing listing of each contract or subcontract obtained by the licensee during the preceding fiscal year in North Dakota this state over the amount of ten thousand dollars, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of ~~such~~ the list to the state tax commissioner and shall also indicate whether ~~or not~~ the license of the applicant was renewed by ~~him~~ the registrar. The application for ~~such~~ a certificate of renewal must be made to the registrar on or before the first day of February of each successive fiscal year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a license renewal fee equal to twenty percent of the license fee ~~for the original license established in section 43-07-07.~~ If any ~~applicant for a certificate of renewal shall apply~~ contractor applies for a renewal under a class different from the license ~~theretofore previously issued to him, such the~~ contractor, the new license ~~shall may~~ be issued only upon the showing ~~and,~~ under the terms and conditions, and upon the payment of the ~~same~~ fee required for the issuance of an original license of the class applied for. All certificates of renewal ~~wherein in which~~ the applicant does not apply for a change in the class of license ~~shall~~ must be issued by the registrar to the applicant when the application is properly filed and the ~~license~~ renewal fee is paid. If any contractor fails to file an application for a certificate of renewal when due, ~~such contractor the~~ registrar shall ~~have his~~ revoke the contractor's license ~~revoked.~~ Any. The registrar shall notify by mail a contractor ~~who had his~~ whose license is revoked ~~shall be notified by mail of~~ ~~such~~ the revocation within sixty days ~~of after~~ the filing deadline. ~~He~~ The contractor may then renew ~~his~~ the license within ninety days ~~of after~~ the filing deadline by paying a penalty fee of twenty-five percent of the ~~original~~ license fee ~~and set forth in section 43-07-07,~~ filing an application

for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation and waiting period prescribed in section 43-07-09.

Approved March 8, 1991

Filed March 8, 1991



## CHAPTER 453

HOUSE BILL NO. 1291  
(Representatives DeMers, Price, Scherber)  
(Senators Mathern, Nalewaja)

### NURSES AND NURSES' ASSISTANTS

AN ACT to create and enact a new subsection to section 43-12.1-02, a new subsection to section 43-12.1-04, a new subsection to section 43-12.1-08, a new subsection to section 43-12.1-15, and a new section to chapter 43-12.1 of the North Dakota Century Code, relating to regulation of nurses and assistants to nurses; to amend and reenact sections 43-12.1-01 and 43-12.1-04 of the North Dakota Century Code, relating to policy with respect to the regulation of nursing practice; to provide a penalty; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-01. Statement of policy. The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. It is essential to govern qualifications for licensure nursing practice with requirements for the maintenance of high standards and to state sanctions by which an illicit, unqualified, dishonest person or one that is otherwise against the public interest can be disciplined. The legislative assembly further declares that it is the policy of this state to regulate through the board of nursing the practice of nursing, those engaged in licensed nursing practice, and all persons who assist in the practice of nursing. A person who practices or offers to practice nursing or who represents that the person is licensed under this chapter or is qualified to assist in the practice of nursing without qualifying under this chapter endangers the public health. This chapter shall be liberally construed in order to carry out its purposes and objectives.

SECTION 2. A new subsection to section 43-12.1-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Assistant to the nurse" means, without regard to agency title, a person who is authorized to perform nursing functions or nursing tasks legally delegated and supervised by a licensed nurse.

SECTION 3. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter. This chapter ~~shall~~ does not apply to:

1. Persons who give nursing assistance in cases of emergency or disaster.
2. Students practicing nursing as a part of a board approved nursing education program.
3. Legally licensed nurses of another state who are employed in this state by the United States government or a bureau, division, or agency thereof.
4. Legally licensed nurses of another state or Canada, whose employment requires them to accompany and care for a patient who is in transit for medical treatment.
5. A person who provides nursing care or performs nursing functions or nursing tasks for an immediate family member.
6. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.

SECTION 4. A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

A person who is not licensed under this chapter and who provides nursing services in a hospital as defined in section 23-30-01.

SECTION 5. A new subsection to section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Establish, implement, and maintain a registry of each person who meets the definition of assistant to the nurse.

SECTION 6. A new subsection to section 43-12.1-15 of the North Dakota Century Code is created and enacted as follows:

Employ a person to perform nursing or nursing-related functions or tasks unless the person is authorized by the board to perform those functions or tasks.

SECTION 7. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Grounds for discipline - Assistant to the nurse. The board may revoke, suspend, or deny the registration of a person providing assistance to a nurse if that person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that person's ability to serve the public as an assistant to the nurse, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;

2. Has been disciplined by a board of nursing or another state agency in another state; or
3. Has engaged in an act in violation of rules adopted by the board.

SECTION 8. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 1993, and after that date is ineffective.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 454

HOUSE BILL NO. 1110  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Board of Nursing)

### PRESCRIPTIVE PRACTICES FOR NURSES

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to establishment and duties of a prescriptive authority committee; and to amend and reenact subsection 5 of section 43-12.1-02 and subsection 16 of section 43-12.1-08 of the North Dakota Century Code, relating to definition of the practice of nursing as a registered nurse and the powers and duties of the board of nursing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-12.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The "practice of nursing as a registered nurse" means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in:
  - a. The maintenance of health and prevention of illness.
  - b. Diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
  - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
  - e. Collaboration in the implementation of the total health care regimen and execution of a medical regimen as prescribed or authorized by a licensed physician or dentist.
  - f. The performance of such additional acts, including prescriptive practices under the supervision of a licensed physician, which are recognized by the nursing profession as proper to be performed by registered nurses who have had ~~additional~~ specialized advanced preparation and are authorized by the board through its rules to perform such acts.

For purposes of this subdivision:

- (1) "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist. Prescriptive practices must be consistent with the scope of practice submitted by the registered nurse to obtain advanced licensure.
- (2) "Supervision of a licensed physician" means performance under a contract with a licensed physician for review and acknowledgement of appropriate prescriptive practices for implementation by the registered nurse with advanced licensure who is authorized by the board to write a prescription to be filled by a licensed pharmacist.

SECTION 2. AMENDMENT. Subsection 16 of section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in **specialized advanced practice** roles after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other recognized nursing specialty groups.

SECTION 3. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Prescriptive practices for registered nurses with advanced licenses. The nature and extent of prescriptive practices must be determined by a prescriptive authority committee comprised of two members of the board of nursing, one of whom must be a registered nurse; one physician appointed by the board of medical examiners; and one pharmacist appointed by the board of pharmacy. The committee may retain consultants as necessary. The committee shall recommend rules regarding prescriptive practices for adoption by the board. Rules adopted by the board must include the evidence required by the board as verification of education and training in pharmacology and clinical management of drug therapy in order to consider an application for prescriptive privileges, and the nature and extent of the collaboration and consultation required from the supervising physician. The application for prescriptive practices must include an affidavit from the supervising physician acknowledging the manner of review and approval of the planned prescriptive practices. The board shall notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of the registered nurses with advanced licenses who are authorized to write prescriptions to be filled by a licensed pharmacist.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 455

SENATE BILL NO. 2492  
(Senators Heinrich, DeKrey)  
(Representatives Shide, DeMers, Cleary)

### TEMPORARY NURSING LICENSES

AN ACT to amend and reenact subsection 19 of section 43-12.1-08 of the North Dakota Century Code, relating to the powers and duties of the board of nursing to issue temporary licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 19 of section 43-12.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a period ~~not to exceed two consecutive years for a temporary practical nurse license or of four consecutive years for a temporary registered nurse license or for a longer period if determined appropriate by the board.~~ The board by administrative rule may identify the requirements for issuance and renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.

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

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 456

SENATE BILL NO. 2425  
(Senators Nalewaja, Dotzenrod)  
(Representatives Larson, D. Olsen, DeMers)

### PRESCRIPTION DISPENSING

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to oral transmission of refilled prescriptions; and to amend and reenact subsections 4 and 18 of section 43-15-01 of the North Dakota Century Code, relating to definitions for the purposes of dispensing prescription drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 18 of section 43-15-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the order that has been reduced to writing in the patient's record, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.
  
18. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded, or dispensed by a pharmacist or any order for drugs or medical supplies transmitted orally by a nurse licensed under chapter 43-12.1 as written and signed by such a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner.

SECTION 2. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Oral transmission of refill prescriptions. An oral reorder for a prescription drug may be accepted and dispensed by a pharmacist or registered pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to transmit the oral refill prescription. Before authorizing the transmittal of the oral refill prescription, the practitioner shall place a written copy of the prescription in the patient's records. Only a registered pharmacist or a registered pharmacist intern may receive an oral refill prescription. An oral refill prescription received by an agent or clerical person employed by a pharmacy

may not be dispensed. The licensing board of a practitioner shall notify the board of pharmacy and board of nursing in writing, on an annual basis or more frequent basis if necessary, of the specific nurse or nurses who are authorized by the practitioner to transmit oral refill prescriptions.

Approved April 11, 1991  
Filed April 12, 1991



## CHAPTER 457

SENATE BILL NO. 2171  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Pharmacy)

### PHARMACY PRACTICE DEFINED

AN ACT to amend and reenact subsection 16 of section 43-15-01 of the North Dakota Century Code, relating to the definition of "practice of pharmacy".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 16 of section 43-15-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. "Practice of pharmacy" means the interpretation ~~and~~ evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, and drug utilization ~~reviews~~ evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; where appropriate and where regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 458

SENATE BILL NO. 2172  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Board of Pharmacy)

### UNLAWFUL PRACTICE OF PHARMACY

AN ACT to amend and reenact section 43-15-14 of the North Dakota Century Code, relating to who may sell drugs, poisons, medicines, or chemicals, and to the unlawful practice of pharmacy; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-15-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~43-15-14. Drugs, poisons, medicines, chemicals - Who may sell. No drug, poison, medicine, or chemical, except patent or proprietary preparations shall be manufactured, compounded, sold, or dispensed in this state for medicinal use by any person other than a registered pharmacist or pharmacy intern enrolled in a school of pharmacy after the freshman year as provided in section 43-15-15, or regularly licensed physician, nor shall any person except a registered pharmacist, regularly licensed physician, or pharmacy intern enrolled in a school of pharmacy after the freshman year as provided in section 43-15-15, dispense or compound a prescription of a medical practitioner except as provided in this chapter.~~

#### Unlawful practice of pharmacy.

1. Applicability. No person may engage in the practice of pharmacy unless registered to practice pharmacy under this chapter. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.
2. Penalties. Any person who is found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed one thousand dollars for each offense. Each violation of this chapter or the rules adopted under this chapter pertaining to unlawfully engaging in the practice of pharmacy also constitutes a class B misdemeanor.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 459

HOUSE BILL NO. 1609  
(Kloubec)

(Approved by the Committee on Delayed Bills)

### **PHYSICIAN ASSISTANT PRESCRIPTIVE AUTHORITY**

AN ACT relating to physician assistants prescribing medications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Physician assistant - Limitations on prescribing drugs. A physician assistant may not prescribe medications except as an agent of the supervising physician. A physician assistant may prescribe medications, in the name of the supervising physician if the authority has been assigned by the supervising physician; however, a physician assistant may not prescribe schedule II controlled substances. The prescription container label must bear the name of the supervising physician and may also bear the name of the physician assistant. Appropriate medical records must be maintained. The state board of medical examiners shall notify the board of pharmacy in writing annually, or more frequently if required by changes, of each physician assistant who is authorized as an agent of a supervising physician to prescribe medications.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 460

HOUSE BILL NO. 1426  
(Henegar)

### PHYSICIAN EMPLOYMENT BY HOSPITAL

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to authorization of physicians to be employed by hospitals incorporated as nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Employment of physicians by nonprofit corporations doing business as hospitals. Notwithstanding any other provision of law, it is permissible for a hospital incorporated as a nonprofit corporation under chapter 10-24 to directly or indirectly employ a physician provided that the employment relationship between the physician and hospital is evidenced by a written contract containing language to the effect that the hospital's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital. Under this section a hospital may not be deemed to be engaged in the practice of medicine.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 461

HOUSE BILL NO. 1483  
(Representatives Nelson, Schneider, Gerntholz)  
(Senators E. Hanson, Bowman)

### PHYSICIAN LICENSING OF FOREIGN GRADUATES

AN ACT to amend and reenact subsection 3 of section 43-17-18 of the North Dakota Century Code, relating to the qualifications of foreign medical graduates for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-17-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program. If an applicant has not completed three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the second and third year of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements;

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 462

SENATE BILL NO. 2181  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Attorney General)

### **MEDICAL EXAMINERS PROSECUTION COSTS**

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to the costs of prosecution by the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician, the board may direct any physician to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board and the commission on medical competency in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 463

SENATE BILL NO. 2097  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Attorney General)

**MEDICAL COMPETENCY COMMISSION ACTION**

AN ACT to amend and reenact section 43-17.1-05 of the North Dakota Century Code, relating to the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. All residents have the right to make or refer complaints to the commission with reference to the acts, activities, or qualifications of any physician licensed to practice in this state, or to request that the commission review the qualifications of any physician to continue to practice in this state. Upon receipt of any complaint or request, the commission shall conduct such investigation as it deems necessary to resolve the matter as it deems appropriate. The commission shall determine whether the physician has committed any of the grounds for disciplinary action provided for by section 43-17-31.
2. If the commission determines that a formal hearing should be held concerning the competency of to determine whether any licensed physician has committed any of the grounds for disciplinary action provided for by section 43-17-31, it shall inform the respondent physician involved of the specific charges to be considered by serving upon him a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the commission shall not participate in any proceeding before the board relating to said complaint. The complaint shall be prosecuted before the board by the attorney general or one of his assistants.
3. If the commission finds that there are insufficient facts to warrant further investigation or action, the complaint shall be dismissed and the matter is closed. The commission shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the commission's final action or recommendations, if any, concerning the complaint.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 464

HOUSE BILL NO. 1555  
(Representatives DeMers, B. Anderson, Myrdal)  
(Senators Heigaard, Yockim, Freborg)

### PHYSICIAN LOAN REPAYMENT PROGRAM

AN ACT to establish a state-community matching physician loan repayment program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State-community matching physician loan repayment program.

1. The North Dakota state-community matching physician loan repayment program is established as provided by this Act.
2. The purpose of the program is to increase the number of physicians practicing medicine in North Dakota communities with defined health professional medical need.
3. Under the program, loan repayments may be made to a recipient for educational expenses incurred while the recipient was attending an accredited four-year allopathic or osteopathic medical school located in the United States or Canada.
4. Loan repayment funds consist of a fifty percent match from the state and a fifty percent match from the selected community.
5. Each recipient is limited to a forty thousand dollar maximum loan repayment to be paid over four years.
6. The state health council shall select up to five recipients in five communities each year as participants in the program.

SECTION 2. Powers of state health council. The state health council may:

1. Determine eligibility and qualifications of an applicant to receive loan repayment in accordance with section 3 of this Act.
2. Identify communities with health professional medical need and establish a priority ranking for program participation of the selected communities.
3. Determine the amount of the loan repayment an applicant may receive within the parameters of this Act. This determination must include an investigation of the outstanding education loans incurred by the applicant.
4. Determine the condition of loan repayment to an applicant.



5. Enter into a four-year nonrenewable loan repayment program contract with the applicant and the selected community to provide repayment of education loans in exchange for the physician agreeing to practice medicine in the selected community.
6. Receive and use funds appropriated for the program.
7. Receive and use funds paid by the selected communities for repayment of education loans for physicians who apply and qualify for assistance under the program.
8. Enforce any contract under the program.
9. Cancel a contract for reasonable cause.
10. Participate in federal programs supporting repayment of loans to eligible physicians, and agree to the conditions of the federal programs.
11. Create a loan repayment application packet.
12. Accept property from any entity.
13. Work with the university of North Dakota's center for rural health in implementing this Act.

SECTION 3. Physician selection criteria - Eligibility for loan repayment.

1. The state health council shall establish criteria to apply to an applicant for a loan repayment. The criteria must include:
  - a. The extent to which an applicant's training is in a medical specialty determined by the state health council to be needed in a selected community.
  - b. The applicant's commitment to serve in a community with defined health professional medical need.
  - c. The applicant's achieving a match with a selected community.
  - d. The availability of the applicant for service, with the highest consideration being given to an applicant who is available for service at the earliest date.
  - e. The applicant's professional competence and conduct.
  - f. The applicant's willingness to accept medicare and medicaid assignment.
2. The state health council shall give priority for program participation to an applicant who:
  - a. Graduated from the university of North Dakota school of medicine and is enrolled in or has completed a university of North Dakota school of medicine postgraduate residency training program;

- b. Graduated from an accredited out-of-state medical or osteopathic college and is enrolled in or has completed a university of North Dakota school of medicine postgraduate residency training program; or
  - c. Graduated from the university of North Dakota school of medicine and is enrolled in or has completed an accredited out-of-state postgraduate residency training program in a specialty training program not available in this state.
3. A physician who receives loan repayment under this Act:
    - a. Must be a graduate of an accredited four-year allopathic or osteopathic medical school located in the United States or Canada;
    - b. Must be enrolled in or have graduated from an accredited graduate training program in medicine prior to or within one year after submitting an application to participate in the loan repayment program and not have practiced full-time medicine in this state within three years before the date of the application;
    - c. Must be licensed to practice medicine in this state;
    - d. Shall submit an application to participate in the loan repayment program; and
    - e. Must have entered into an agreement with a selected community to provide full-time medical services for a minimum of four years at the selected community if the applicant receives a loan repayment program contract.

#### SECTION 4. Community selection criteria.

1. The state health council shall apply at least the following criteria for selecting a community with defined health professional medical need:
  - a. The ratio of physicians to population in the community.
  - b. Access by the residents of the community to medical care within the community and in the surrounding area.
  - c. Assessment of the expected number of physician visits within the community per year.
  - d. The mix of physician specialties within the community.
  - e. Indications of community support for more physicians within the community.
2. The state health council shall give priority for participation to a community that:
  - a. Demonstrates a need for primary care physicians or for a physician trained in the specialty of psychiatry; or

- b. Has a population of not more than fifteen thousand persons.
3. In selecting a community with health professional medical need, the state health council may consult public and private associations and organizations and make an onsite visit to a community for assessment.

SECTION 5. Eligible loans. The state health council may provide for loan repayment to a recipient of any education loan. The council may not provide for repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the applicant's outstanding education loans. No applicant may receive repayment in an amount greater than the total outstanding balance on the applicant's education loans together with applicable interest. Loan payments may not be used to satisfy other service obligations under similar programs.

SECTION 6. Breach of loan repayment contract. A recipient of loan repayment under this Act who breaches the loan repayment program contract by failing to begin or complete the obligated service is liable for twice the total uncredited amount of all loan repayment that was contracted on a prorated monthly basis. Any damages the state is entitled to recover under this Act shall be paid to the health council within one year from the date of the breach of the loan repayment program contract. Amounts not paid within the one-year period may be subject to collection through deductions in medicaid payments or other collection methods. Damages recoverable for breach of contract include all interest, costs, and expenses incurred in collection, including attorneys' fees. Damages collected under this section must be prorated among the state and the involved community. The state share must be deposited in the general fund. For compelling reasons, the health council may agree to and accept a lesser measure of damages for breach of a loan repayment program contract.

SECTION 7. Release from contract obligation. An applicant is released from the applicant's obligated service, without penalty, if the obligated service has been completed; the applicant is unable to complete the term of the contract because of permanent physical disability; the applicant dies; or the applicant proves extreme hardship or other good cause, to be determined by the council. A decision by the health council not to release an applicant from the applicant's obligated service without penalty, is reviewable by the district court.

SECTION 8. Term of obligated service. The length of the term of obligated service of a recipient of a loan repayment under this Act is four years.

SECTION 9. Payment. No payment may be made under this Act until the physician has practiced at least six months on a full-time basis in a selected community with health professional medical need. Any arrangement made by the state health council for loan repayment in accordance with this Act must provide that any loan repayment for a year of obligated service be made no later than the end of the fiscal year in which the physician completes the year of obligated service.

SECTION 10. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state health council for the purpose of establishing and operating the North

Dakota state-community matching physician loan repayment program for the biennium beginning July 1, 1991, and ending June 30, 1993.

Start-up and administrative costs	\$ 5,000
Loan repayment funds	<u>75,000</u>
Total general fund appropriation	\$80,000

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 465

SENATE BILL NO. 2534  
(Yockim, Lindaas, E. Hanson, Krauter)

### DENTISTS AND DENTAL HYGIENISTS

AN ACT to create and enact a new section to chapter 43-28 of the North Dakota Century Code, relating to fees assessed by the board of dental examiners; to amend and reenact sections 43-20-02, 43-20-06, 43-20-07, 43-20-12.1, 43-20-12.2, subsection 5 of section 43-28-02, sections 43-28-03, 43-28-04, 43-28-05, 43-28-06, 43-28-11, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-15, 43-28-16, 43-28-17, 43-28-18, 43-28-22, and 43-28-24 of the North Dakota Century Code, relating to the regulation of dental hygienists and the regulation of the practice of dentistry; and to repeal section 43-20-04 of the North Dakota Century Code, relating to the recording of dental hygienist licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-02. Dental hygienists - Qualifications - Examinations - Registration and license. Any person of good moral character not already a licensed dental hygienist of this state, being a graduate of an accredited high school or its equivalent, who is a graduate of a school of dental hygiene approved or provisionally approved by the council on education commission on dental accreditation of the American dental association, upon making application applying for such a license and upon the payment of forty dollars an amount determined by the board, may be examined by the North Dakota state board of dental examiners, on the subjects considered essential by it for a dental hygienist. Such The examinations shall must be conducted by the board of dental examiners or by a designee of the board, or by a regional dental testing service in which the board participates, or by other national or regional dental testing services that the board recognizes. If the applicant, in the opinion of the board, successfully passes the examination, the applicant shall must be registered and licensed as a dental hygienist. For such applicants as Applicants who fail to pass a satisfactory initial examination, subsequent examinations may be had before the board reexamined upon payment of a the fee of fifteen dollars determined by the board for each subsequent examination, but no. An applicant shall may not be allowed to take more than three examinations. Applicants for examination shall submit their credentials to the board at least thirty days prior to before the examination date, which date shall must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The North Dakota board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the North Dakota board of dental examiners in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Section 43-20-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Fees - Display. On or before January first of each year, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of such the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. The payment of such the fee within such that thirty-day period, with an additional sum of fifteen dollars determined by the board, shall excuse the default. The board may collect such the fee by suit. Such Each licensed hygienist must shall display conspicuously at the place of employment the annual registration license.

SECTION 3. AMENDMENT. Section 43-20-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. Dental hygienists from other states. Any dental hygienist duly licensed to practice as such in another state, and who is of good moral character and desirous of removing to this state, and deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of such that state, certifying that the dental hygienist is of good moral character and professional attainments, may upon the payment of a the fee of forty dollars determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the said board shall deem deems necessary and proper, be granted a license to practice in this state. The board may, however, dispense with examining such an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.

SECTION 4. AMENDMENT. Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. Five years from July 1, 1971, or upon Upon the fifth anniversary of the issuance of his a license, whichever occurs last, to practice dental hygiene and each five years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dentistry dental examiners evidence, of a nature suitable to the board, that such the licensed person has attended, or participated in such the amount of continuing education in dental hygiene as shall be is required by the board. The minimum requirement may not be less than forty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other such evidence of continuing education approved by the board may approve.

Any licensed person who ~~shall fail~~ fails to comply with this requirement ~~shall~~ must, at the discretion of the board, be reexamined to determine ~~his~~ the person's competency to continue licensure. If, in the opinion of the board, ~~such~~ the licensed person does not qualify for further licensed practice, the board shall suspend ~~such~~ the license until ~~such time~~ as the dental hygienist ~~shall provide~~ provides acceptable evidence to the board of ~~his~~ the hygienist's competency to practice.

SECTION 5. AMENDMENT. Section 43-20-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address. A licensed dental hygienist shall notify the secretary-treasurer of the board of dental examiners of any new ~~business~~ address within thirty days of the address change. A licensed dental hygienist may not practice in this state for more than thirty days after the change of ~~business~~ address without complying with this section.

SECTION 6. AMENDMENT. Subsection 5 of section 43-28-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, ~~air force~~, public health service, coast guard, veterans bureau, or director of the dental division of the North Dakota state department of health and consolidated laboratories.

SECTION 7. AMENDMENT. Section 43-28-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-03. State board of dental examiners - Members - Appointment - Terms of office - Oath - Vacancies. The state board of dental examiners ~~shall consist~~ consists of ~~six~~ ~~seven~~ members to be appointed by the governor. The membership of the board ~~shall~~ must include five dentist members and, one dental hygienist member, and one consumer member. Appointment to the board ~~shall be~~ is for a term of five years, with terms of office arranged so that one term expires on March sixteenth of each year, except that each fifth year there ~~will~~ must be two new board members appointed, one of whom ~~shall be~~ is a dentist and the other a dental hygienist. ~~The first five-year term of the dental hygienist will commence on July 1, 1981, and continue through March 15, 1986 and two years later two new board members must be appointed, one of whom is a dentist, and one of whom is a consumer member. The first five-year term of the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~ Each member of the board shall hold office until a successor is appointed and qualified. Persons appointed to the board shall qualify by taking the oath required of civil officers. No member ~~shall~~ may serve more than one ~~entire five-year term~~ ten years or two ~~5-year terms of office,~~ and any member who has not served an ~~entire five-year term~~ may be reappointed to the board. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist. All vacancies on the board ~~shall~~ must be filled by the governor by appointment.

SECTION 8. AMENDMENT. Section 43-28-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-04. Qualifications and appointment of members of the board - Limited vote.

1. ~~No~~ A person ~~shall~~ may not be appointed as a dentist member of the board unless that person:
  - a. Is a duly licensed and registered dentist.
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding ~~his~~ the appointment.
  - c. ~~Never has served as a member of the board for an entire five-year term.~~
2. ~~No~~ A person ~~shall~~ may not be appointed as the dental hygienist member of the board unless that person:
  - a. Is a duly licensed and registered dental hygienist in accordance with ~~the provisions of~~ chapter 43-20.
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
  - c. ~~Never has served as a member of the board for an entire five-year term.~~
3. A person may not be appointed as the consumer member of the board unless that person:
  - a. Has been a resident of North Dakota for five years.
  - b. Has no personal or family financial relationship with the dental profession.
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a person engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas with the following exceptions:
  - a. ~~The issuance, suspension, and revocation of dental licenses.~~
  - b. ~~Any disciplinary action taken against dentists.~~
  - c. The examination of dentists for licensure except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

SECTION 9. AMENDMENT. Section 43-28-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:



43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting, at such a place as is designated by it the board and such special meetings as are when necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of eighty five ninety dollars for each day actually engaged in the duties of his the office, twenty cents per mile (1.61 kilometers) for the distance necessarily traveled in going to and returning from meetings of the board, and not to exceed actual expenses per day for meals and lodging and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The secretary-treasurer shall must be paid an annual salary equal to fifteen percent of all funds received by the board during the year. Four members of the board shall constitute a quorum but a smaller number may adjourn from time to time.

SECTION 10. AMENDMENT. Section 43-28-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-06. Powers of board. The board shall have the power may:

1. To make; amend; revise Adopt and enforce reasonable rules and regulations to govern its proceedings and to carry out the provisions of the this chapter.
2. To examine Examine applicants for licenses to practice dentistry or dental hygiene in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.
3. To issue Issue, suspend, revoke, limit, restrict, and reinstate, licenses to practice dentistry or dental hygiene and the annual certificates of registration upon any grounds authorized by this chapter.
4. To issue Issue subpoenas to require the attendance of witnesses, and the production of documentary evidence, and to may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas, but all subpoenas so issued shall must be attested by the secretary who shall affix the seal of the board thereto.
5. To employ Employ and compensate attorneys, investigative staff, and clerical assistants and to may perform such any other duties as are imposed upon the board by this chapter.
6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.

SECTION 11. AMENDMENT. Section 43-28-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-11. Examination required - Application - Qualifications - Fees. Any person who desires to obtain a license to practice dentistry in this state shall make application apply to the secretary-treasurer of the board on

such forms as it may provide prescribed by the board and shall submit to an examination by the board. The application shall must be verified under oath to the effect that all of the statements contained therein in the application are true of applicant's own knowledge, and must be received by the secretary-treasurer of the board at least thirty days prior to before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and the sum of one hundred fifty dollars an application fee as determined by the board. Additional costs of simultaneous examination regional or other state's examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant must shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

SECTION 12. AMENDMENT. Section 43-28-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12. Examination - Subjects covered. At the next regular meeting of the board held after an application for a license and a certificate of registration to practice dentistry in this state is made the applicant shall appear before the board, which shall give an examination to test the applicant for fitness to practice dentistry. The board may require the applicant to supply the board with the results of the applicant's national board examination which may at the discretion of the board be considered determinative of the applicant's theoretical knowledge and scholastic fitness for the practice of dentistry. The board may require the applicant to supply the board with the results of the applicant's clinical competency examination which may be administered:

1. Directly by the board;
2. By a regional dental testing service in which the board participates; or
3. By a regional dental testing service determined by the board to be equivalent to those in which the board directly participates.

The board may consider the results of a clinical competency examination to be determinative of the applicant's clinical fitness for the practice of dentistry.

SECTION 13. AMENDMENT. Section 43-28-12.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.1. Simultaneous Regional or other states' examination. The results of an examination given in another state by that state's equivalent to or an examination administered by a regional dental testing service recognized by the North Dakota board of dental examiners may be considered by this state's board as an example of the applicant's fitness to practice dentistry in this state, if that licensing body or regional testing service is officially recognized by the board. The other state examination must be observed by a member of this state's board, or by a designee of the board, and the applicant must be found to be of good moral character.

SECTION 14. AMENDMENT. Section 43-28-12.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists. ~~Five years from July 1, 1977, or upon~~ Upon the fifth anniversary of the issuance of ~~his a license, whichever occurs last,~~ to practice dentistry and each five years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that ~~such~~ the licensed person has attended, or participated in ~~such~~ the amount of continuing education in dentistry ~~as shall be~~ required by the board. The minimum requirement ~~shall be~~ may not be less than ~~fifty seventy~~ fifty seven hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other ~~such~~ such evidence of continuing education ~~approved by the board may approve.~~ approved by the board.

Any licensed dentist who fails to comply with this requirement ~~shall may,~~ at the discretion of the board, be reexamined to determine ~~his the dentist's~~ his the dentist's competency to continue licensure. If, in the opinion of the board, ~~such the~~ such the licensed dentist does not qualify for further licensed practice, the board shall suspend ~~such the~~ such the license until ~~such time as~~ such time as the dentist ~~shall provide~~ provides acceptable evidence to the board of ~~his the dentist's~~ his the dentist's competency to practice.

SECTION 15. AMENDMENT. Section 43-28-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-14. Reexamination - Fee - Additional education. If an applicant fails to pass the examination given by the board, the applicant may apply for another examination, and upon the payment of ~~a the fee of twenty five dollars~~ the fee of twenty five dollars ~~shall determined by the board must~~ shall be determined by the board be reexamined. The board shall determine the number of times an applicant may be reexamined, ~~provided, that.~~ provided, that. However, if the applicant fails on three occasions to pass the examination given by the board or an equivalent examination under section 43-28-12.1, the applicant shall provide evidence of additional education as required by the board ~~prior to~~ before applying for another examination in this state.

SECTION 16. AMENDMENT. Section 43-28-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-15. License and certificate - When issued to practitioners of another state. The board may issue a license and certificate of registration to practice dentistry in this state to any person who wishes to ~~move to this state from another state~~ practice dentistry in North Dakota upon a practical examination ~~only, if such~~ only, if such the person:

1. Has been licensed to practice dentistry in another state where the requirements are equivalent to those of this state, and where like provisions are accorded to holders of certificates of registration issued in this state.

2. Is a reputable dentist of good moral character.
3. Pays to the board ~~a the fee of one hundred fifty dollars~~ determined by the board.
4. Delivers to the board a certificate from the examining or licensing board of the every state in which ~~he~~ the person is practicing or is licensed to practice, certifying that ~~he~~ the person is a licensed and registered dentist in that state, and is of good moral character.
5. Demonstrates ~~his~~ the person's ability to the satisfaction of the board.

~~However, if there is complete reciprocity between the applicant's state and this state, the~~ The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

SECTION 17. AMENDMENT. Section 43-28-16 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under ~~the provisions of~~ this chapter ~~shall be~~ is valid for only one year and ~~shall~~ must be renewed on or before the first day of January in each year. The fee for renewal of the certificate ~~shall not exceed seventy five dollars~~ must be determined by the board and must be submitted ~~prior to~~ before January first. The holder of a license and certificate of registration shall display the ~~same~~ license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal ~~thereof, shall be~~ of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 18. AMENDMENT. Section 43-28-17 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - Revocation of license. Whenever a licensed dentist fails to pay the annual fee for the renewal of the certificate of registration ~~prior to~~ before January first, after thirty days' written notice of ~~such the~~ default without proper payment, the board may revoke the license to practice dentistry and notify the dentist of the revocation. The payment of the annual fee within the thirty-day period, with an additional sum of ~~fifty dollars, determined by the board~~ will excuse the default.

SECTION 19. AMENDMENT. Section 43-28-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for revocation or suspension of license and certificate. The board may revoke ~~or, suspend, limit, or restrict the scope of~~ the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional or immoral conduct.

2. Been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted unlicensed persons to practice dentistry in the office under ~~his~~ the dentist's control.
6. Become grossly negligent in the practice of ~~his~~ the profession.
7. Practiced fraud and deceit in obtaining ~~his~~ the license or in the practice of dentistry.
8. ~~Employed a solicitor or agent to obtain business.~~
- ~~9.~~ Willfully betrayed confidential relations.
- ~~10.~~ 9. Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners; ~~provided, however, that.~~ However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of ~~such~~ the association.
- ~~11.~~ 10. Shared any professional fee with anyone or paid anyone for sending or referring patients to ~~him;~~ ~~provided, however, that this shall be the dentist.~~ However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
- ~~12.~~ 11. Used any advertising of any character tending to mislead and deceive the public.
- ~~13.~~ ~~Controlled or owned, or presently controls or owns a dental laboratory or X-ray laboratory, or operates the same in connection with his office, and has advertised such dental or X-ray laboratory in a manner prohibited herein.~~
12. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
13. Prescribed medications for reasons or conditions outside the scope of dental practice.

14. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
15. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
16. Willfully engaged in fraudulent submission of insurance claims.
- ~~+4-~~ 17. Made any false or untrue statements in his the application for an examination to obtain a license to practice dentistry.
- ~~+5-~~ 18. Made any false representations that he the person is the holder of a license or certificate of registration to practice dentistry.
- ~~+6-~~ 19. Made any false claims that he the person is a graduate of a dental college or the holder of any diploma or degree from such a dental college.
- ~~+7-~~ 20. Violated any of the provisions of this chapter.

SECTION 20. AMENDMENT. Section 43-28-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-22. Reinstatement of license - Renewal of certificate - When issued - Fees. ~~No~~ A dentist ~~shall~~ may not be reinstated, and ~~no~~ a license and certificate of registration ~~shall~~ may not be reissued, except on the following conditions:

1. Where the license and certificate of registration have been revoked for cause upon one or more of the grounds specified in this chapter, a dentist may be reinstated only:
  - a. Upon application to the board for reexamination.
  - b. Upon payment of examination fees required by this chapter.
  - c. Upon successfully passing said the reexamination.
  - d. Upon payment of an additional administrative fee to be fixed by the board; ~~which shall not exceed seventy five dollars.~~
2. Where the license and certificate of registration has been revoked for nonpayment of annual registration fees required by this chapter, ~~said~~ the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board ~~not to exceed seventy five dollars; provided, however, that.~~ However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the annual registration fee to submit to a reexamination as to his the person's qualification to practice dentistry before he the person is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public, and the applicant, will be served thereby.

SECTION 21. AMENDMENT. Section 43-28-24 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-24. Duplicate license and certificate - When issued - Fee. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate upon satisfactory proof by applicant of the loss or destruction thereof. The fee for such a duplicate license shall must be twenty dollars determined by the board and the fee for issuing a duplicate certificate of registration shall must be ten dollars determined by the board.

SECTION 22. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Fees. All license fees, registration fees, and other fees authorized to be assessed and collected by the board must be established by rules adopted by the board.

SECTION 23. REPEAL. Section 43-20-04 of the 1989 Supplement to the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 466

HOUSE BILL NO. 1206  
(Committee on Industry, Business and Labor)  
(At the request of the Real Estate Commission)

### REAL ESTATE BROKER AND SALESPERSON QUALIFICATIONS

AN ACT to amend and reenact section 43-23-05, subsection 6 of section 43-23-06.1, sections 43-23-07, 43-23-08, 43-23-08.1, 43-23-08.2, and 43-23-09, subsection 1 of section 43-23-11.1, sections 43-23-12, 43-23-13, 43-23-13.1, subsection 2 of section 43-23-15, section 43-23.1-17, subsection 1 of section 43-23.1-18, subsections 1 and 2 of section 43-23.2-02, and section 43-23.2-09 of the North Dakota Century Code, relating to real estate licensing, license standards, continuing education, investigations, designation of a real estate broker's place of business, real estate continuing education courses, civil remedies, and the real estate education, research, and recovery fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-05. Real estate license required. No person shall act as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker or advertise or assume to act as such real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker without a license issued by the real estate commission. No person shall be entitled to collect any fees, compensation, or commission as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker without having first complied with the provisions of this chapter. No copartnership, association, or corporation shall be granted a license, unless at least one partner, shareholder, or officer of the copartnership, association, or corporation, actually engaged as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker as defined herein, shall hold a license as a real estate broker, and unless every employee who acts as a real estate ~~salesman~~ salesperson or mortgage broker for such copartnership, association, or corporation shall hold a license as a real estate ~~salesman~~ salesperson or mortgage broker.

SECTION 2. AMENDMENT. Subsection 6 of section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6. "Real estate ~~salesman~~ salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 5 for or on behalf of such licensed real estate broker.

SECTION 3. AMENDMENT. Section 43-23-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:



43-23-07. Real estate brokers, ~~salesmen~~ salesperson, or mortgage brokers - Exceptions. The term "real estate broker", "real estate ~~salesman~~ salesperson", or "mortgage broker" does not include:

1. Any person, partnership, association, or corporation who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, where the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in county court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties.

\* SECTION 4. AMENDMENT. Section 43-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08. License standards.

1. Licenses and the renewals thereof shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker, a real estate ~~salesman~~ salesperson, or mortgage broker in such manner as to safeguard the interest of the public, and whose real estate license or mortgage broker license has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or ~~salesman's~~ salesperson's license must be at least eighteen years of age.

\* NOTE: Section 43-23-08 was also amended by section 1 of Senate Bill No. 2322, chapter 467.

3. Every applicant for a license as a real estate broker:
  - a. Shall have been actively engaged as a licensed real estate ~~salesman~~ salesperson for a period of at least one year preceding the date of application, which, beginning July 1, 1979, shall be increased to two years; or
  - b. Shall have had experience as determined by the commission to be substantially equal to that which a licensed real estate ~~salesman~~ salesperson would ordinarily receive during a period of one year, which, beginning July 1, 1979, shall be increased to two years.
4. Beginning July 1, 1977, each applicant for a broker's license shall be required to have successfully completed at least sixty classroom hours in a course of study approved by the commission, and beginning July 1, 1979, each applicant shall be required to have successfully completed at least ninety classroom hours in a course of study approved by the commission. As used throughout this section, the term "classroom hours" shall mean the actual time during such course of study that the class is actually in session.
5. After July 1, 1977, each ~~salesman~~ salesperson licensee, as a condition precedent to obtaining a license renewal, shall have successfully completed prior to the first license renewal period which occurs after twelve months from the date that the initial license has been granted, at least thirty classroom hours in a course of study approved by the commission.
6. If the commission shall find that an applicant could not acquire employment as a licensed real estate ~~salesman~~ salesperson because of conditions existing in the area where ~~he~~ the salesperson resides, then the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established whereby applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
7. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

SECTION 5. AMENDMENT. Section 43-23-08.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-08.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the commission determines that the offense has a direct bearing upon a person's ability to serve the public as a real estate broker or ~~salesman~~ salesperson, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

\* SECTION 6. AMENDMENT. Section 43-23-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or ~~salesman's~~ salesperson's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or ~~salesman~~ salesperson will not have been licensed three years on the date ~~he or she~~ the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated by the commission. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses shall not require passing of a test to qualify for satisfaction of this requirement. Licensees shall have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course shall be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.

No license shall be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission on or before the thirty-first day of December immediately preceding the year for which the license is issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. The forfeiture and cancellation shall be performed without any notice to the licensee or any opportunity for hearing. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules and regulations of the commission.

The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, shall be exempt from the requirements of this section.

SECTION 7. AMENDMENT. Section 43-23-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23-09. License application. Every application for a real estate broker's license, a real estate ~~salesman's~~ salesperson's license, or a mortgage broker's license shall be in writing upon blanks prepared by the commission and shall contain such data and information as the commission may require.

SECTION 8. AMENDMENT. Subsection 1 of section 43-23-11.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 43-23-08.2 was also amended by section 1 of House Bill No. 1176, chapter 468.

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state, and shall have the power to suspend or revoke a license, impose a monetary fine, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
  - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
  - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
  - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to ~~his~~ that person's injury or damage.
  - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom ~~he~~ the licensee acts.
  - e. Failure to account for or to remit, within a reasonable time, any moneys coming into ~~his~~ the licensee's possession belonging to others; commingling funds of others with ~~his~~ the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which shall contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
  - f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
  - g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to ~~his~~ the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
  - h. Failing or refusing upon demand to produce any document, book, or record in ~~his~~ the licensee's possession or under ~~his~~ that person's control, concerning any real estate transaction under investigation by the commission.
  - i. Offering real property for sale or lease without the knowledge and consent of the owner or ~~his~~ the owner's authorized agent or

- on any terms other than those authorized by the owner or ~~his~~ authorized agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
  - k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
  - l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate ~~salesman~~ salesperson under this chapter.
  - m. Failing to disclose to an owner ~~his~~ the licensee's intention or true position if ~~he~~ the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with ~~his~~ the licensee's office for sale or lease.
  - n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
  - o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in ~~his~~ the broker's files.
  - p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
  - q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
  - r. Accepting a commission or valuable consideration as a real estate ~~salesman~~ salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom ~~he~~ the individual is licensed as a ~~salesman~~ salesperson.
  - s. If the licensee is a broker, allowing any unlicensed ~~salesman~~ salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.

- t. Failure of a salesman salesperson to place with his that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by him the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from his salesman the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys shall then be deposited during the next business day of the depository.
- u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
- v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of his that person's licensed privilege.
- w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salesmen salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.

SECTION 9. AMENDMENT. Section 43-23-12 of the North Dakota Century Code is amended and reenacted as follows:

43-23-12. Broker's place of business - License of employed salesman salesperson.

1. Every person, partnership, association, or corporation licensed as a real estate broker or mortgage broker shall be required to have and maintain a definite place of business within this state, for the transaction of real estate or mortgage broker business, ~~or such business and any other business conducted by him~~. The certificate of registration as broker and the certificate of each real estate salesman salesperson or mortgage broker employed by such broker shall be prominently displayed in said office. The said place of business shall be designated in the license, and no license issued under the authority of this chapter shall authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period. The broker's home may qualify as such place of business.
2. All licenses issued to real estate salesmen salespersons or mortgage brokers shall designate the employer of such salesmen

salespersons or brokers. Prompt notice in writing, within ten days, shall be given to the commission by any real estate salesman salesperson or mortgage broker of a change of employer, and of the name of the licensed broker into whose employ the salesman salesperson or broker is about to enter, and a new license shall thereupon be issued by the commission to such salesman salesperson or broker for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesman salesperson or mortgage broker, without notice to the commission as aforesaid, shall automatically cancel ~~the that~~ person's license ~~to him theretofore issued~~. Upon termination of a real estate salesman's salesperson's or broker's employment, the broker employer, shall forthwith return the salesman's salesperson's license or mortgage broker's license to the commission for cancellation. It shall be unlawful for any real estate salesman salesperson or mortgage broker to perform any of the acts contemplated by this chapter either directly or indirectly after his that person's employment has been terminated and license as a salesman salesperson or mortgage broker has been returned for cancellation, until said license has been reissued by the commission.

SECTION 10. AMENDMENT. Section 43-23-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-13. Fees. Fees for real estate brokers, mortgage brokers, and real estate salesmen salespersons are as follows:

1. A fee of fifty dollars must accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of fifty dollars.
3. For an individual's real estate salesman's salesperson's license and for each annual renewal of the license, a fee of forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.
5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesman's salesperson's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee of twenty dollars.
9. For each change of name, a fee of ten dollars.

\* SECTION 11. AMENDMENT. Section 43-23-13.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker, real estate ~~salesman~~ salesperson, or mortgage broker must register annually with the commission and pay the appropriate annual renewal fee. The application for renewal of a real estate broker's, real estate ~~salesman's~~ salesperson's, or mortgage broker's license shall be made to the commission no later than December thirty-first of each year after licensure. Failure to remit an annual renewal fee no later than December thirty-first automatically cancels the license on January first of the subsequent year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee as provided in section 43-23-13 may file a late renewal application before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after the January first when the license was canceled.

SECTION 12. AMENDMENT. Subsection 2 of section 43-23-15 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission may assist libraries, real estate brokers and real estate ~~salesmen~~ salespersons, institutes and foundations, with financial aid or otherwise, in providing texts, sponsoring studies, surveys, and programs for the benefit of real estate and the elevation of the real estate business.

SECTION 13. AMENDMENT. Section 43-23.1-17 of the North Dakota Century Code is amended and reenacted as follows:

43-23.1-17. Real estate license required. No real estate broker, ~~salesman~~ salesperson, or mortgage broker shall offer or dispose of subdivided lands within or from this state, except in dispositions and transactions exempt under section 43-23.1-05, unless said real estate broker, ~~salesman~~ salesperson, or mortgage broker is licensed pursuant to chapter 43-23.

SECTION 14. AMENDMENT. Subsection 1 of section 43-23.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Every disposition made in violation of any of the provisions of this chapter, or of any order issued by the commission under any of the provisions of this chapter, shall be voidable at the election of the purchaser. The person making such disposition, and every director, officer, ~~salesman~~ salesperson, or agent of or for such person who shall have participated or aided in any way in making such disposition, shall be jointly and severally liable to such purchaser in any action at law in any court of competent jurisdiction for the consideration paid for the lot, parcel, unit, or interest, together with interest at the rate of six percent per year from the date of payment, property taxes and assessments paid, court costs, and reasonable attorney's fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance made at any time before the entry of judgment. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, ~~he~~ that person may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less

\* NOTE: Section 43-23-13.1 was also amended by section 2 of House Bill No. 1176, chapter 468.



interest at the rate of six percent per year on that amount from the date of disposition.

SECTION 15. AMENDMENT. Subsections 1 and 2 of section 43-23.2-02 of the North Dakota Century Code are amended and reenacted as follows:

1. In addition to the appropriate licensing fees paid by real estate brokers and ~~salesmen salespersons~~, each person licensed for the calendar year 1976 as a real estate broker or ~~salesman salesperson~~ shall pay, at the time of application for such license, a separate fee in the amount of twenty dollars which shall be credited into the education, research, and recovery fund. Each person so licensed for the calendar year 1977 shall pay a like fee in the amount of twenty dollars which shall be credited into the fund. Thereafter, any person who is licensed as a real estate broker or ~~salesman salesperson~~ for the first time, either for the calendar year 1978 or for a subsequent calendar year, shall pay a fee of twenty dollars at the time of obtaining such license which shall be credited into the fund. Except for assessments paid into the fund as provided in subsection 2 of this section, any person obtaining a broker's or ~~salesman's salesperson's~~ license for the first time which becomes effective for the calendar year 1978 or for a subsequent calendar year, shall pay the fee of twenty dollars into the fund only once.
2. If, on June thirtieth of any year, following the establishment of the real estate education, research, and recovery fund, the amount remaining in the fund is less than sixty thousand dollars, every licensed real estate broker and ~~salesman salesperson~~, when renewing ~~his~~ that individual's license, shall pay, in addition to the annual renewal fee, a sum not to exceed twenty dollars, which shall have been determined by the commission to be sufficient to restore the balance in the fund to at least sixty thousand dollars.

SECTION 16. AMENDMENT. Section 43-23.2-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23.2-09. Repayment to fund. Should the commission pay from the fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or ~~salesman salesperson~~, the license of the broker or ~~salesman salesperson~~ shall be automatically suspended upon the effective date of an order by the court as set forth herein authorizing payment from the fund. No such broker or ~~salesman salesperson~~ shall be granted reinstatement until ~~he has~~ having repaid in full, plus interest at the rate of four percent a year, the amount paid from the fund on ~~his~~ that person's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 467

SENATE BILL NO. 2322  
(Goetz)

### REAL ESTATE LICENSE STUDY REQUIREMENTS

AN ACT to amend and reenact section 43-23-08 of the North Dakota Century Code, relating to license standards for real estate brokers and salesmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 43-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08. License standards.

1. Licenses and the renewals thereof shall be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker, a real estate salesman, or mortgage broker in such manner as to safeguard the interest of the public, and whose real estate license or mortgage broker license has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.
2. In addition to the requirements established by subsection 1, an applicant for a broker's or salesman's license must be at least eighteen years of age.
3. Every applicant for a license as a real estate broker:
  - a. Shall have been actively engaged as a licensed real estate salesman for a period of at least one year preceding the date of application, which, beginning July 1, 1979, shall be increased to two years; or
  - b. Shall have had experience as determined by the commission to be substantially equal to that which a licensed real estate salesman would ordinarily receive during a period of one year, which, beginning July 1, 1979, shall be increased to two years.
4. Beginning July 1, ~~1977~~ 1992, each applicant for a ~~broker's salesman's~~ license shall be required to must have successfully completed at least ~~sixty~~ sixty three classroom hours in a course of study approved by the commission, and ~~beginning July 1, 1979,~~ each applicant ~~shall be required to~~ for a broker's license must have successfully completed at least ninety an additional sixty classroom hours in a course of study approved by the commission.

\* NOTE: Section 43-23-08 was also amended by section 4 of House Bill No. 1206, chapter 466.

As used throughout this section, the term "classroom hours" shall mean the actual time during such course of study that the class is actually in session.

5. ~~After July 1, 1977, each salesman licensee, as a condition precedent to obtaining a license renewal, shall have successfully completed prior to the first license renewal period which occurs after twelve months from the date that the initial license has been granted, at least thirty classroom hours in a course of study approved by the commission.~~
6. If the commission shall find that an applicant could not acquire employment as a licensed real estate salesman because of conditions existing in the area where he resides, then the experience requirements established in subdivisions a and b of subsection 3 may be waived by the commission. The educational requirements of subsection 4 may not be waived by the commission, but guidelines may be established whereby applicants who have engaged in certain educational courses of study which are closely related to the real estate profession may be deemed to have satisfied this requirement.
- ~~7.~~ 6. The commission may adopt reasonable rules and regulations pursuant to the provisions of chapter 28-32 relative to procedures for licensing, approval of coursework, and for the type of certification or proof of coursework completion that must be submitted.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 468

HOUSE BILL NO. 1176  
 (Committee on Industry, Business and Labor)  
 (At the request of the Real Estate Commission)

### REAL ESTATE LICENSE RENEWAL

AN ACT to amend and reenact sections 43-23-08.2 and 43-23-13.1 of the North Dakota Century Code, relating to renewal and cancellation of licenses of real estate brokers and salesmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 43-23-08.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, 1984, and every three years thereafter, each applicant for renewal of a broker's or salesman's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than twenty-four hours of approved continuing education. If a broker or salesman will not have been licensed three years on the date he or she is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules promulgated by the commission. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses shall not require passing of a test to qualify for satisfaction of this requirement. Licensees shall have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course shall be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.

No license shall be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission on or before the thirty-first day of December immediately preceding the year for which the license is issued. Any licensee failing to comply with this section shall not engage in any activity for which a license is required under this chapter, and any license not renewed by the thirty-first day of March of the year for which the license is issued shall be declared forfeit and canceled by the commission. The forfeiture and cancellation shall be performed without any notice to the licensee or any opportunity for hearing. Any person whose license has been forfeited and canceled and who desires relicensure shall be required to satisfy the application and examination requirements for prospective licensees in

\* NOTE: Section 43-23-08.2 was also amended by section 6 of House Bill No. 1206, chapter 466.

accordance with this chapter and rules and regulations of the commission in accordance with section 43-23-13.1.

The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, shall be exempt from the requirements of this section.

\* SECTION 2. AMENDMENT. Section 43-23-13.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker, real estate salesman, or mortgage broker must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal of a real estate broker's, real estate salesman's, or mortgage broker's license shall be made must be accompanied by such certification as required by this chapter and rules and regulations of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year after licensure. Failure to remit an annual renewal fee no later than December thirty first automatically cancels the license on January first of the subsequent year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee as provided in section 43-23-13 may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after the January first when the license was canceled. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 43-23-13.1 was also amended by section 11 of House Bill No. 1206, chapter 466.

## CHAPTER 469

SENATE BILL NO. 2259  
(Lips)

### REAL ESTATE APPRAISERS

AN ACT to establish a North Dakota real estate appraiser qualifications and ethics board; to provide for the licensure and certification of real estate appraisers; to provide a penalty; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means a written communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who is in training to obtain a license as an appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.
10. "Certified appraiser" means a person who develops and communicates appraisals and who holds a valid permit as a certified appraiser.
11. "Licensed appraiser" means a person who holds a valid appraiser license.

12. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
13. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
14. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal foundation as adopted and modified by the board. The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.
15. "Valuation" means an estimate of the value of real estate or real property.

SECTION 2. North Dakota real estate appraiser qualifications and ethics board. The governor shall appoint the board. The board must consist of five members. One member must represent the public, one member must represent the financial industry, and three members must be appraisers, one of which is experienced in the appraisal of agricultural property. The appraiser members first appointed to the board must be members in good standing of an organization belonging to the appraisal foundation or have the equivalent of five years of full-time experience as an appraiser in this state. Thereafter, each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the North Dakota credit union league, and the North Dakota league of savings institutions. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising. The term of each member is five years, except that of the members first appointed, one shall serve for five years, one shall serve for four years, one shall serve for three years, one shall serve for two years, and one shall serve for one year. A member of the board continues to hold office until the appointment and qualification of a successor. The governor may remove a board member for cause. The members annually shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

SECTION 3. Powers and duties of the board.

1. The board, or its designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, and certified appraiser, determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this Act, and establish application procedures.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.

- c. Approve or disapprove applications for licensure and certification, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals licensed and certified.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.
  - f. Adopt rules necessary to carry out the requirements imposed by federal law.
2. The board, or its designated representative, may:
    - a. Promote research and conduct studies relative to real estate appraising and sponsor educational activities.
    - b. Contract for services necessary to carry out this Act.
    - c. Enter into reciprocity agreements with other states.

SECTION 4. Permit required - Exemptions. Except as provided in this section, beginning July 1, 1991, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this Act. This Act does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This Act does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 5. Permit process. An individual who desires to engage in the practice of real estate appraisal shall apply for a permit on forms prescribed by the board and submit the required fee.

SECTION 6. Classes of permits. The board may issue license and certification permits for appraisers.

1. An apprentice appraiser may assist a licensed or a certified appraiser in the performance of an appraisal assignment.
2. A licensed appraiser must meet the minimum requirements established by the board for a permit relating to licensed appraisers.
3. A certified appraiser must meet the appraisal foundation minimum requirements for a permit relating to the appraisal of all types of real property.

SECTION 7. Examination requirement. The board shall issue a permit to practice as a licensed or a certified appraiser to an individual who has demonstrated the following qualifications through a written examination process:



1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.
2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.
3. Understanding of the uniform standards of professional appraisal practices.
4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.
5. Basic understanding of real estate law.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser.

#### SECTION 8. Application prerequisites.

1. An applicant for a permit as an apprentice appraiser must have a high school education or its equivalent and must successfully complete fifteen classroom hours related to the standards of professional practice and this Act.
2. An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal subcommittee and the board.
3. An applicant for a permit to practice as a certified appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.

#### SECTION 9. Appraisal experience.

1. The board may issue a permit to practice as a licensed appraiser to an individual who possesses the minimum experience requirements established by the appraisal subcommittee and the board.
2. The board may issue a permit to practice as a certified appraiser to an individual who possesses the minimum experience requirements established by the appraisal foundation and the board. The board may require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

SECTION 10. Term of permit. The term of a permit is one year from the date of issuance. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 11. Nonresident permit.

1. A nonresident applicant for a permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last known business address of the nonresident appraiser.
2. The board may issue a permit to a nonresident if the applicant agrees in writing to abide by this Act and to submit to the jurisdiction of the board.
3. The board shall issue a permit to practice to a nonresident who has complied with this section. The board may require the nonresident to pay a temporary appraiser's fee. The board shall determine the amount of the temporary fee and the duration of the temporary permit.
4. If the board determines that another state has substantially equivalent requirements and the board enters into a reciprocity agreement, an applicant from that state may obtain a permit to practice as either a licensed or certified appraiser upon application and payment of any required permit fee.

SECTION 12. Permit renewal. To renew a permit to practice as a licensed or a certified appraiser, the permittee shall apply to the board and pay the required fee. With the application for renewal, the appraiser shall present evidence of having completed the continuing education requirements for renewal. A person who has temporarily surrendered a permit may not act as an appraiser, but may reactivate a permit without an examination. That person is subject to disciplinary action and activation of an inactive permit may be subject to a denial by the board.

SECTION 13. Principal place of business. An appraiser shall notify the board of the address of the appraiser's place of business. Within twenty days of a change in the address of the place of business, the appraiser shall give written notification of the change to the board and pay the change of address fee.

SECTION 14. Permit number displayed with signature. An appraiser shall place the appraiser's permit number adjacent to the appraiser's signature on an appraisal report, contract, or other writing used by the appraiser in conducting appraisal activities.

SECTION 15. Use of designation. The terms "licensed appraiser" and "certified appraiser" may only be used to refer to an individual who holds a permit under this Act and may not be used following or immediately in connection with the name or signature of any other individual or person or in a manner that might be interpreted as referring to any other individual or person other than the individual who holds the permit. This section does not prohibit a licensed or certified appraiser from signing an appraisal report on behalf of a corporation, partnership, or firm.

SECTION 16. Action for fee. No claim for relief may be instituted in any court of this state for compensation for an act done or service rendered as either a licensed or a certified appraiser unless the appraiser held a permit to practice under this Act at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for a contemplated act or service as a licensed or a certified appraiser.

SECTION 17. Retention of records. A licensed or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the appraiser's services for appraisal work and all reports and supporting data assembled and formulated by the appraiser in preparing the reports. The period for retention of records applies to each engagement of the services of the appraiser and commences upon the date of the submission of the appraisal to the client unless, within that period, the appraiser is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The appraiser shall make available for inspection and copying by the board on reasonable notice all records required to be maintained.

SECTION 18. Standards of professional appraisal practice. A licensed and certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

SECTION 19. Continuing education. Beginning July 1, 1992, and every three years thereafter, each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board. The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.
2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 20. Fees. The board may charge apprentice, licensed, and certified permittees and educational providers or promoters reasonable fees to help offset costs of operating the board. The board shall establish the charges by rule.

SECTION 21. Disposition of fees. The board, or its designated representative, shall deposit all fees collected by the board in a separate account. Disbursements from the account may not exceed the moneys credited to it. The board's designated representative shall review and pay appropriate charges against the account for services provided to the board.

SECTION 22. Disciplinary proceedings.

1. The board may, and upon the verified complaint in writing of any person shall, investigate the activities of any person and may suspend or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the person has:
  - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
  - b. Failed to meet the minimum qualifications established under this Act.
  - c. Paid money other than provided for by this Act to any member or employee of the board to procure a permit.
  - d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
  - e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
  - f. Violated any standard for the development or communication of appraisals as provided in this Act.
  - g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
  - h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
  - i. Willfully violated this Act or rules of the board.
  - j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or where the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

- k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
- l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.
2. In a disciplinary proceeding based upon a civil judgment, the appraiser must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

SECTION 23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this Act is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

SECTION 24. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to the North Dakota real estate appraiser qualifications and ethics board for the purpose of defraying the expenses of the board for the period beginning with the effective date of this Act, and ending June 30, 1993. Such sum appropriated as is accepted by the board must be returned to the general fund by June 30, 1993, to the extent funds are not returned to the general fund by June 30, 1993, the funds must be returned by June 30, 1995, with interest from fees collected by the board.

SECTION 25. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 470

HOUSE BILL NO. 1318  
(Representatives Jensen, R. Berg, Kelsch)  
(Senators Stenehjem, Traynor, Krebsbach)

### REAL ESTATE BROKER TRUST ACCOUNTS

AN ACT to provide for a real estate broker trust account program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Real estate trust account committee. The president of the North Dakota association of realtors, with the approval of the board of directors of the association, shall appoint a five-member real estate trust account committee. Three members must be realtors in this state who are members of the association and licensed to practice real estate in this state. The remaining two members may not be realtors. The term of office for members is three years, except that, as determined by lot, one realtor member first appointed shall serve for an initial term of one year, and one realtor member and one nonrealtor member first appointed shall serve an initial term of two years. No member may serve more than two successive three-year terms. Each member shall serve until a successor is appointed. A vacancy on the committee must be filled by appointment of a member to serve for the unexpired portion of the term. Members of the committee serve at the pleasure of the board of directors of the association.

SECTION 2. Powers and duties of the committee.

1. The real estate trust account committee shall implement and administer an interest on broker trust account program.
2. The committee is the sole recipient of the interest or dividends paid to the North Dakota association of realtors from real estate interest-bearing trust accounts under the broker trust account program. Upon receipt of the funds, the committee shall make appropriate temporary investments of the funds pending disbursement of the funds. All funds received from the interest or dividends on real estate trust accounts and the income earned from investment of the funds must be maintained in accounts separate from other funds held by the association.
3. The committee, by grants and appropriations it determines appropriate, shall disburse funds solely for:
  - a. Providing housing and shelter to the homeless and poor.
  - b. Providing public education relating to needs of housing for the poor.
  - c. Improving available safe and decent housing.

4. No funds may be disbursed for any purpose other than tax-exempt public purposes permitted under section 18 of article X of the Constitution of North Dakota, and section 501(c)(3) of the Internal Revenue Code.
5. The real estate trust account committee shall maintain adequate records reflecting all transactions arising with respect to income from and disbursements of the interest on real estate trust accounts.
6. Within one hundred eighty days after the effective date of this Act, the association shall adopt rules establishing guidelines and procedures for the operation of an interest on real estate trust account program, including:
  - a. Guidelines for identifying eligible applicants.
  - b. Procedures for submitting grant applications.
  - c. Guidelines for awarding grant applications.
  - d. Procedures for accounting for the expenditure of grant funds by the recipient.

Upon becoming effective, the guidelines and procedures are the basis for the administration of the disbursement of the funds by the committee.

7. Immediately after the effective date of this Act, the real estate trust account committee shall take any action necessary to obtain:
  - a. A private letter revenue ruling from the internal revenue service, holding that the interest earned on funds deposited in a real estate trust account and paid to the committee are not includable in the gross income of either the client or third person who owns the funds, or of the broker who deposited the funds, and that neither the depository institution nor the broker is required to report the payment of the interest on behalf of the client or third person.
  - b. Permission from the federal reserve system, federal home loan bank board, and federal deposit insurance corporation to use negotiable order of withdrawal accounts for the deposit of funds of clients or third persons held by a broker in connection with a representation in connection with a representation or transaction.

**SECTION 3. Officers.** The president of the board of directors of the North Dakota association of realtors, with the approval of the board, shall appoint a chairman and vice chairman of the real estate trust account committee. The committee may elect other officers as it deems appropriate and may specify their duties.

**SECTION 4. Director.** The real estate trust account committee may appoint an executive director of the real estate trust account committee on a full-time or part-time basis at the pleasure of the board. The executive director is entitled to receive compensation set by the committee. The

executive director, before entering upon the duties of the office, may be required to provide a surety bond in an amount determined by the committee. The executive director is responsible and accountable to the committee for the proper administration of this Act. The executive director may employ persons or expend money for services approved by the committee.

**SECTION 5. Disposition of funds upon dissolution.** If the real estate trust account committee is discontinued, any funds under control of the committee must be transferred to its successor entity qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under section 2 of this Act or, if there is no successor, to the general fund of the state real estate commission's research, recovery, and education fund.

**SECTION 6. Preserving identity of funds and property of a client.**

1. All funds of clients paid to a real estate broker, including advances for costs and expenses, must be deposited in one or more identifiable interest-bearing trust accounts maintained as required by section 43-23-14.1.
2. Each real estate broker's trust account must be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation, and selected by the broker in the exercise of ordinary prudence unless otherwise agreed upon by the parties to the real estate transaction as provided by rule by the real estate commission. Interest-bearing trust funds must be placed in accounts in which withdrawals or transfers may be made by the depositing broker or realty firm without delay, subject only to any notice period that the depository institution is required to reserve by law or regulation.
3. The broker shall direct the depository institution to:
  - a. Remit interest or dividends, minus any service charges or fees to the brokers or depository institution, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the real estate trust account committee;
  - b. Transmit with each remittance to the association a statement showing the name of the broker or real estate firm for which the remittance is sent, the rate of interest applied, the amount of any service charges deducted, the account balance of the period in which the report is made; and
  - c. Transmit a copy of the statement to the depositing broker.
4. Every licensed real estate broker shall maintain on a current basis, records sufficient to demonstrate compliance with the laws and rules governing the interest-bearing trust account activities.

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 471

SENATE BILL NO. 2311  
(Traynor)

### REFLEXOLOGY

AN ACT to amend and reenact section 43-25-02 of the North Dakota Century Code, relating to the definition of massage therapist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### 43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage establishment" means any place of business where one or more of the subjects and methods of treatments defined in this section are administered or used.
3. "Massage therapist" means a person who practices or administers any of the following subjects and who has studied the underlying principles of anatomy and physiology generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure, ~~reflexology~~, and polarity and, after July 1, 1993, massage includes reflexology. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists may not diagnose or treat classified diseases, practice spinal or other joint manipulations, or prescribe or administer vitamins.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 472

SENATE BILL NO. 2208  
 (Committee on Agriculture)  
 (At the request of the State Board of  
 Veterinary Medical Examiners)

### VETERINARIAN LICENSING

AN ACT to amend and reenact sections 43-29-01, 43-29-04, 43-29-06, 43-29-07, 43-29-08, 43-29-09, 43-29-11, 43-29-12, subsections 1 and 8 of section 43-29-13, subsection 8 of section 43-29-14, section 43-29-15, and subsections 1 and 3 of section 43-29-16.1 of the North Dakota Century Code, relating to licensing of veterinarians, the issuance of a limited specialty license and graduate veterinary technicians, fees, the definition of veterinary medicine, the excepted practices, the refusal, suspension, and revocation of license, hearing and appeal, and the abandonment of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-01 of the North Dakota Century Code is amended and reenacted as follows:

43-29-01. Purpose of the chapter. This chapter shall be deemed an exercise of the police powers of the state of North Dakota acting through the legislative assembly to the end that the general welfare of the agricultural public, the livestock industry, and the people as a whole will be preserved and enhanced through the control and supervision hereby vested in the North Dakota state board of veterinary medical examiners, in licensing of veterinarians, defining their scope of activity in treatment of livestock, fixing their responsibility in the conduct of their practice, listing the requirements necessary to pass an inspection of their facilities, listing of the educational requirements necessary for licensing renewal, listing of the rules of professional conduct, defining the handling of abandoned animals, defining the duties and conduct of graduate ~~animal~~ veterinary technicians, and preventing unqualified persons from engaging in veterinary practice by instituting the necessary legal proceedings for the law's proper enforcement.

SECTION 2. AMENDMENT. Section 43-29-04 of the North Dakota Century Code is amended and reenacted as follows:

43-29-04. Record of proceedings of board - Register of applicants kept by board - Records and register as evidence. The state board of veterinary medical examiners shall keep a record of all its proceedings and ~~also a record or~~ register of applicants for licenses showing ~~as to the name of each such applicant his name,~~ the time spent by him each applicant in the study and practice of veterinary medicine, surgery, or dentistry, and the name and location of the school, college, or university which granted him the applicant a degree or diploma. Such books and records shall be prima facie evidence of the matters recorded therein.

SECTION 3. AMENDMENT. Section 43-29-06 of the North Dakota Century Code is amended and reenacted as follows:

43-29-06. Graduation from recognized school and certificate or permit from board required - Application for license. No person shall practice, or hold himself out as a practitioner in veterinary medicine, surgery, or dentistry, or any department thereof, unless he is a graduate. Only those persons who are graduates of the veterinary course offered in a veterinary school or in a college, or university recognized by the board, nor unless he and who possesses a certificate or permit issued by the state board of veterinary medical examiners which is in full force and effect may hold themselves out or engage in the practice of veterinary medicine, surgery, or dentistry, or any department thereof.

Any person qualified under the provisions of this chapter, desiring to begin the practice of veterinary medicine or veterinary surgery in the state of North Dakota, shall make application to said board for license to do so. Such application shall be made at least thirty days prior to the meeting of the board. The board shall give public notice of the time and place for the examination.

SECTION 4. AMENDMENT. Section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

43-29-07. Application for license - Fees for examination and registration - Fees not to be returned - Renewal fees - Certificate of registration - Roster of registered veterinarians - Change of address - Renewal of registration upon forfeiture. Any person desiring a license to practice veterinary medicine in this state shall make written application for licensing to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota veterinary medical examining board a fee of fifty dollars. Fees shall not be returned, except by action of the board. If the license is granted, the licensee shall pay on or before the date set out in this section, for such time as ~~he~~ the licensee shall continue practice, an annual registration fee as determined by the board, based on the financial needs of the board. The renewal registration fee shall be paid by all licensed veterinarians.

All veterinarians actually engaged and employed as such by the state, county, city, or by any corporation, firm, or individual shall be deemed to be practicing veterinary medicine and shall secure a state license or certificate of qualification issued by the board.

Each person licensed by the board shall on or before the first day of July of each calendar year be required to pay the annual renewal registration fee to the executive secretary. Before the first day of June of each calendar year the executive secretary of the board shall send a notice to each veterinarian who holds a license to practice veterinary medicine in the state, whether resident or not, at ~~his~~ that person's last address, that ~~his~~ the annual renewal registration fee is due on or before the first day of July.

The executive secretary of the board shall issue a certificate of registration upon the payment of the required fee and publish biennially for proper distribution a roster of all veterinarians registered in the state of North Dakota, as soon as the registration for each two-year period is completed.

Each veterinarian licensed by the board, whether a resident or not, shall notify the secretary of any change in his that person's office address or employment within sixty days after such change has taken place. Any person licensed to practice veterinary medicine after the fifteenth day of April, or any person issued a temporary permit to practice veterinary medicine after that date, is exempt from this requirement to pay the annual registration fee until the first day of July of the year following licensure.

Registration shall be deemed a condition precedent to the practice of veterinary medicine and surgery in this state, and a certificate of registration currently in effect must be on display at all times in the office of each veterinarian engaged in active practice.

Any person registered under this chapter who may have forfeited his registration by nonpayment of fees may renew the same within one year without examination by paying such fees.

The board may by rule waive the payment of the registration fee of a licensed veterinarian during the period when he the veterinarian is on active duty in connection with any branch of the armed forces of the United States, not to exceed the term of three years or the duration of the national emergency, whichever shall last occur.

SECTION 5. AMENDMENT. Section 43-29-08 of the North Dakota Century Code is amended and reenacted as follows:

43-29-08. Certificate of qualification issued to applicants passing examination - Conclusiveness of certificate - Reexamination. The board shall issue a certificate of qualification to each applicant who passes such examination as the board may require and who is qualified under the provisions of this chapter. Such certificate shall be signed by the president and the executive secretary of the board and shall remain in force upon payment of the renewal registration fee becoming due thereafter, and so long as the holder complies with the provisions of this chapter. Notwithstanding the payment of such fee, his the veterinarian's license may be suspended or revoked as provided hereinafter in this chapter.

Any applicant for license who shall fail to satisfy the board of veterinary medical examiners as to his that applicant's qualifications may, upon application, be reexamined within not less than six months upon payment of an additional fee of fifty dollars.

SECTION 6. AMENDMENT. Section 43-29-09 of the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate ~~animal~~ veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the state board of veterinary medical examiners for a temporary permit to practice if he the applicant possesses a degree or diploma showing that he is the applicant to be a graduate of the veterinary course offered in a veterinary school or in a college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars shall be applied toward the examination fee, but shall be declared forfeit if the applicant fails to present himself appear at the next scheduled examination. No temporary permit shall be issued to any applicant if he who has previously failed the examination. The

executive secretary, if ~~he is~~ satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue ~~to him~~ a permit to practice until the next examination is offered by the board. Such permit shall have the same force as a certificate from the board, but shall expire upon the adjournment of the next meeting thereof at which an examination is held.

Senior veterinary students who practice in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. This temporary student permit shall not exceed four months from its date of issuance and will be granted without payment of a fee.

The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to the provisions of this chapter during the term of the license. Fees for a limited specialty license are the same as provided for a regular license.

The board shall adopt rules for the training, certification, and limits of activity for assistants and ~~animal~~ veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All ~~animal~~ veterinary technicians shall be registered with and subject to requirements established by the board. As used in this chapter, ~~an animal~~ a veterinary technician is a paramedical person who has had further training of at least ~~one year, preparing him two years of preparation~~ for veterinarian related employment in a position between the professional doctor and the animal attendant levels. ~~He~~ A veterinary technician must be trained and knowledgeable in the care and handling of animals, the basic principles of normal and abnormal life processes, and the routine laboratory and clinical procedures. Primarily, ~~his~~ the work of a veterinary technician shall be to assist veterinarians, biological researchers, and other veterinary scientists.

SECTION 7. AMENDMENT. Section 43-29-11 of the North Dakota Century Code is amended and reenacted as follows:

43-29-11. Fees deposited with state treasurer - Separate fund - Vouchers. All moneys and fees collected or received by the board under the provisions of this chapter shall be deposited with the state treasurer to be held ~~by him~~ for all legitimate expenses of the board. The state treasurer shall keep such moneys in a separate fund continued from year to year and shall disburse the same only on warrants drawn against such fund by the president or the executive secretary of the board.

SECTION 8. AMENDMENT. Section 43-29-12 of the North Dakota Century Code is amended and reenacted as follows:

43-29-12. Veterinary medicine defined. Any person is conclusively presumed to practice veterinary medicine, surgery, and dentistry, and the various branches thereof when ~~he does any one of the following~~:

1. Represents himself as There is any representation that the person is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry in any of its branches.
2. Diagnoses The person diagnoses or prescribes a drug, medicine, appliance or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of animals.
3. Administers The person administers a drug, medicine, appliance or application or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, or bodily injury or disease of animals, except where such drug, medicine, appliance, or application or treatment is administered at the direction and under the direct supervision of a veterinarian licensed under this chapter.
4. Performs The person performs a surgical operation upon an animal.
5. Performs The person performs any ~~manual~~ procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock.
6. Uses The person uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry. Such use shall be prima facie evidence of the intention to represent himself that person as engaged in the practice of veterinary medicine, veterinary surgery, or veterinary dentistry.

SECTION 9. AMENDMENT. Subsections 1 and 8 of section 43-29-13 of the North Dakota Century Code are amended and reenacted as follows:

1. Those who administer to livestock, the title to which rests in himself themselves, or in ~~his~~ their regular employer, except where the ownership of the animal was transferred to avoid the requirements of this chapter, or those who perform gratuitous services.
8. Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, ~~animal~~ veterinary technicians, interns, or other employees of such licensed practitioners.

SECTION 10. AMENDMENT. Subsection 8 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

8. Failure of the licensee to keep his the premises used in the licensee's practice in a reasonably clean and sanitary condition, and failure to use reasonably sanitary methods in the practice of veterinary medicine.

SECTION 11. AMENDMENT. Section 43-29-15 of the North Dakota Century Code is amended and reenacted as follows:

43-29-15. Hearing on charges - Appeal. Any person may prefer charges on any of the grounds as set forth in subsections 1 to 11 of section 43-29-14 by filing with the board in writing a sworn statement setting forth the specific charges upon which the complaint is made. Upon receiving any such complaint the board shall give at least twenty days' notice to the person complained about of the time and place for hearing thereon, together with a copy of the complaint filed, and after hearing all evidence and testimony presented thereon, the board shall have the power to revoke, or suspend for a limited time, the license and registration certificate of any registrant found guilty by the board of improper conduct on any of the grounds as set forth in subsections 1 to 11 of section 43-29-14. Any ~~person~~ licensee whose license has been revoked by the board may within thirty days thereafter upon written notice to the board appeal to the district court in the county of ~~his~~ the licensee's residence for a hearing de novo of the charges on which his license was revoked. The ~~registrant~~ licensee shall have the right at any such hearing to be represented by counsel, to call witnesses ~~in his behalf~~, and to cross-examine adverse witnesses. Any appeal regarding a limited specialty license must be made to the Burleigh County district court.

Any person whose license has been revoked may apply to the board for reinstatement and relicensure, and if the board is satisfied that such conduct will be discontinued may reissue a license to such person.

SECTION 12. AMENDMENT. Subsections 1 and 3 of section 43-29-16.1 of the North Dakota Century Code are amended and reenacted as follows:

1. Any animal placed in the custody of a licensed doctor of veterinary medicine for treatment, boarding, or other care, which shall be abandoned by its owner or ~~his~~ its owner's agent for a period of more than ten days after a written notice, by registered or certified letter, return receipt requested, is given to the owner or ~~his~~ its owner's agent at ~~his~~ the last known address, may be turned over to the custody of the nearest humane society or dog pound in the area or disposed of as such custodian may deem proper.
3. For the purpose of this section, the term "abandoned" shall mean to forsake entirely or to neglect or refuse to provide or perform the care and support of an animal by its owner or ~~his~~ its owner's agent; such abandonment shall constitute the relinquishment of all rights and claim by the owner of such animal.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 473

SENATE BILL NO. 2304  
(Senators Stenehjem, Mathern, Evanson)  
(Representatives Larson, Jensen)

### PSYCHOLOGIST CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-32 of the North Dakota Century Code, relating to continuing education requirements for psychologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board shall adopt rules establishing requirements for the continuing education of psychologists.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 474

HOUSE BILL NO. 1235  
(Carlisle)

## HEARING INSTRUMENT DISPENSERS

AN ACT to amend and reenact sections 43-33-01, 43-33-02, 43-33-02.1, 43-33-03, 43-33-04, 43-33-06, 43-33-07, 43-33-08, 43-33-09, 43-33-10, 43-33-11, 43-33-12, 43-33-13, 43-33-14, 43-33-15, and 43-33-17 of the North Dakota Century Code, relating to the board of hearing instrument dispensers; to repeal sections 43-33-05 and 43-33-16 of the North Dakota Century Code, relating to the board of hearing instrument dispensers and licensing of hearing instrument dispensers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-33-01 of the North Dakota Century Code is amended and reenacted as follows:

43-33-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. ~~"Department" shall mean office of attorney general charged with administering the chapter in the state.~~ "Board" means the board of hearing instrument dispensers.
2. ~~"Hearing instrument" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries, cords, and earmold tubing.~~
- 2- 3. ~~"License" shall mean means a license issued by the state under this chapter to hearing aid dealers and fitters instrument dispensers.~~
- 3- ~~"Trainee permit" shall mean a temporary permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.~~
- 4- ~~"Board" shall mean the board for licensing hearing aid dealers and fitters.~~
- 5- ~~"Hearing aid" shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries and cords.~~
- 6- 4. "Practice of fitting and dealing in hearing aids" shall mean dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by

any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing aids instruments. The term also includes the making of impressions for earmolds. A dealer dispenser, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

- 7- 5. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dealers dispensers.
6. "Trainee permit" means a temporary permit issued while an applicant is in training to become a licensed hearing instrument dispenser.

SECTION 2. AMENDMENT. Section 43-33-02 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02. License required to sell or fit hearing aids instruments.

1. No person shall A person may not engage in the sale of or practice of fitting hearing aids instruments or display a sign or in any other way advertise or represent himself as a that that person who practices the fitting and sale of hearing aids after July 1, 1969, instruments unless he that person holds an unsuspended, unrevoked license issued by the department board as provided in this chapter. The license required by this chapter shall must be conspicuously posted in his the licensee's office or place of business. Duplicate licenses shall must be issued by the department board to valid license holders operating more than one office without additional payment for a fee determined by the board. A license under this chapter shall confer confers upon the holder the right to select, fit, and sell hearing aids instruments, and the right to conduct any necessary hearing testing incident to the selecting, fitting, and selling of hearing instruments.
2. Nothing in this This chapter shall does not prohibit a corporation, partnership, trust, association or other like organization person maintaining an established business address from engaging in the business of selling or offering for sale hearing aids instruments at retail without a license provided that if that person employs only properly licensed natural persons individuals in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations, or other like organizations persons shall file annually with the board a list of all licensed hearing aid dealers and fitters instrument dispensers directly or indirectly employed by it. Such organizations Those persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the department board and the provisions of this chapter which the department shall deem applicable to them.

SECTION 3. AMENDMENT. Section 43-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall does not disqualify a person from licensure under this chapter unless the department board determines that the offense has a direct

bearing upon a person's ability to serve the public as a hearing aid dealer instrument dispenser, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-33-03 of the North Dakota Century Code is amended and reenacted as follows:

43-33-03. Receipt required to be furnished to a person supplied with hearing aid instruments.

1. Any person who practices the fitting and sale of hearing aids instruments shall deliver to each person supplied with a hearing aid instrument a receipt which shall contain that contains the licensee's signature and show his, the licensee's business address and, the number of his the licensee's certificate, together with specifications as to the make and model of the hearing aid instrument furnished, and the full terms of the sale clearly stated. If an aid which instrument that is not new is sold, the receipt and the instrument's container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable, with the terms of guarantee, if any.
2. Such The receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter instrument dispenser in connection with the fitting and selling of this hearing aid(s) instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

SECTION 5. AMENDMENT. Section 43-33-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter is does not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided this instruments if the person or organization employing such that person does not sell hearing aids or accessories thereto instruments.

SECTION 6. AMENDMENT. Section 43-33-06 of the North Dakota Century Code is amended and reenacted as follows:

43-33-06. Issuance of license.

1. The department board shall register each applicant without discrimination or examination who satisfactorily passes the experience requirement as provided in section 43-33-05 or if the applicant passes an examination as provided in section 43-33-07, and upon the applicant's payment of fifty dollars a fee as established by the board, shall issue to the applicant a license signed by the department secretary of the board. The license shall be is effective until January thirtieth of the year following the year in which it is issued the expiration date stated on the license and identification card.

2. Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice to fit and sell hearing aids instruments, and that such the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing aids instruments, the department board may issue certificates of endorsement to applicants who hold current, unsuspended and unrevoked certificates or licenses by examination to fit and sell hearing aids instruments in such the other state or jurisdiction. No such applicants The board may not issue a license to an applicant for a certificate of endorsement if the applicant's license or certificate from the other state or jurisdiction was obtained by experience. An applicant for a certificate of endorsement pursuant to this subsection shall may not be required to submit to or undergo a qualifying examination, but the applicant must pay the fees required by this chapter the board. The holder of a certificate of endorsement shall must be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall must be the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of certificates of endorsement shall must be the same as for renewal, suspension, and revocation of a license.

SECTION 7. AMENDMENT. Section 43-33-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-07. License by examination.

1. Applicants who do not meet the experience qualification on July 1, 1969, may obtain a license by successfully passing a qualifying examination, provided if the applicant:
  - a. Is at least eighteen years of age.
  - b. Is of good moral character.
  - c. Has an education equivalent to a four-year course in an accredited high school.
  - d. Is free of contagious or infectious disease.
2. The applicant for license by examination shall appear at a time, place, and before such persons as the department may designate board designates, to be examined by means of written and practical tests in order to demonstrate that the applicant is qualified to practice the fitting and sale of hearing aids instruments. The examination administered as directed by the board constituting standards for licensing may not be conducted in such a manner that college training is required in order to pass the examination. Nothing in this The examination may not imply that the applicant must possess the degree of medical competence normally expected of physicians.

3. The department board shall give examinations once a year at a time and place ~~to be~~ designated by the board, and may give more frequent examinations if deemed necessary by the board.
4. In addition to all other fees, the fee for an examination to determine qualifications for license must be set by the board.

SECTION 8. AMENDMENT. Section 43-33-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-08. Temporary trainee permit.

1. ~~After July 1, 1969, an~~ An applicant who fulfills the requirements regarding age, character, education, and health as set forth in ~~subsection 1 of~~ section 43-33-07, may obtain a trainee permit upon application to the department board. Previous experience, or a waiting period ~~shall~~ may not be required to obtain ~~this~~ a trainee permit.
2. Upon receiving an application ~~as provided under this section and accompanied by a fee of thirty five dollars, the department as established by the board,~~ the board shall issue a trainee permit ~~which shall enable that permits the applicant to engage in the training of fitting and sale of hearing aids instruments for a period of one year under the direct supervision of a person holding a valid hearing aid dealers and fitters instrument dispenser license. The trainee shall train in the same place of business as that of the supervisor and shall be required to have fulfilled must complete at least thirty hours of book and visual aid training during office hours and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before his the trainee's first public contact alone. A trainee shall not be permitted to may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training the trainee must spend one day per week in the office or place of business within any period of sixty days, and one week with the supervisor within any period of sixty days. The trainee may not make any sale of a hearing aid instrument without first consulting with his the supervisor and obtaining the supervisor's approval for such the sale.~~
3. If a person who holds a temporary trainee permit ~~under this section~~ has not successfully passed the licensing examination during ~~this~~ the one-year period from the date of issuance, the temporary trainee permit may be renewed or reissued once upon payment of a ~~twenty five dollar~~ fee ~~established by the board.~~
4. A supervisor may not have more than three trainees under supervision at a time.

SECTION 9. AMENDMENT. Section 43-33-09 of the North Dakota Century Code is amended and reenacted as follows:

43-33-09. Scope of examination. The qualifying examination provided in section 43-33-07 ~~shall consist~~ consists of:

1. Tests of knowledge in the following areas as they pertain pertaining to the fitting and sale of hearing aids instruments:
  - a. Basic physics of sound-;
  - b. The anatomy and physiology of the ear-;
  - c. The function of hearing aids- instruments;
  - d. Elementary audiology-; and
  - e. Any other requirements established by the board.
2. Practical tests of proficiency in the following techniques as they pertain pertaining to the fitting of hearing aids instruments:
  - a. Pure tone audiometry, including air conduction testing and bone conduction testing-;
  - b. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing-;
  - c. Masking when indicated-;
  - d. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid- instrument;
  - e. Taking earmold impressions-;
  - f. Hearing instrument modification technique; and
  - g. Any other requirements established by the board.

SECTION 10. AMENDMENT. Section 43-33-10 of the North Dakota Century Code is amended and reenacted as follows:

43-33-10. Notice to department board of place of business - Notice to holders of license - How given by department board.

1. A person who holds a license shall notify the department board in writing of a regular address of the place or places where he the person engages or intends to engage in the fitting or the sale of hearing aids instruments.
2. The department board shall keep a record of the place of business of persons who hold licenses.
3. Any notice required to be given by the department board to a person who holds a license shall must be mailed to him by certified mail at the address of the last place of business of which he the person has notified the department board.
4. The department board shall keep a record of the trainees, their place of training, and their supervisors.

SECTION 11. AMENDMENT. Section 43-33-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-11. Annual renewal of license - Fees - Effect of failure to renew. Each person who engages in the fitting and sale of hearing aids instruments shall annually, on or before January thirtieth the expiration of the person's license, pay to the department a fee of seventy five dollars board the proper fees, together with a certificate showing attendance for a minimum of two days at a school or seminar, ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing aids instruments, for a renewal of his a license and shall keep such license conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate licenses shall be issued by the department for posting in each location. A thirty-day grace period shall must be allowed after January thirtieth, during which time licenses the expiration of a license when a license may be renewed on payment of a fee of one hundred dollars the proper fees together with the certificate of annual training continuing education to the department board. After expiration of the grace period, the department board may renew such licenses a license upon the payment of one hundred twenty five dollars the proper fees together with the certificate of annual training continuing education to the department board. No A person who applies for renewal, whose license has expired, shall may not be required to submit to any an examination as a condition to renewal, provided such if the renewal application is made within two years from the date of such the expiration and is accompanied with a certificate of training as herein designated continuing education during the twelve months immediately preceding the date of application.

SECTION 12. AMENDMENT. Section 43-33-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-33-12. Complaint procedure - Grounds for revocation or suspension of license - Appeals.

1. Any person wishing to make a complaint against a licensee under this chapter shall reduce the same to writing and file this a written complaint with the department board within one year from the date of the action upon which the complaint is based. If the department board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall may be suspended or revoked, it shall make an order fixing establish a time and place for a hearing and requiring order the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint and the order and copy of the complaint shall must be served upon the licensee at least twenty days before the date set for hearing, either personally or by registered mail sent to licensee's last known address. Continuances or adjournments of a hearing date shall must be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the department shall have the right to board may take depositions in advance of hearing and after service of the complaint and either may compel the attendance of witnesses by subpoenas issued by the department board. Either party taking depositions shall give at least five days' written notice to the other party of the time and

place of such depositions, and the other party ~~shall have the right to~~ may attend with counsel if desired and cross-examine.

2. Any person registered under this chapter may have his license revoked or suspended for a fixed period by the department. The board may revoke or suspend a person's license for any of the following causes:
- a. The conviction of an offense determined by the department board to have a direct bearing upon a person's ability to serve the public as a hearing ~~aid dealer~~ instrument dispenser, or the department board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Procuring of a license by fraud or deceit practiced upon the department.
  - c. Unethical conduct. Unethical conduct means:
    - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
    - (2) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by this chapter.
    - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
    - (4) Advertising a particular model or type of hearing aid instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
    - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids instruments when that is not true, or using the word "doctor", "clinic", "audiologist" or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when such that is not accurate, except that the designation of "certified hearing aid audiologist" may be used when certification thereof has been conferred by and is in good standing with the national hearing aid society or use of the titles "hearing instrument specialist" or "board certified hearing instrument specialist" when the qualifying requirements have not been met through the national hearing aid society or national board for certification in hearing instrument sciences.



- (6) Habitual intemperance.
  - (7) Gross immorality.
  - (8) Permitting another to use ~~his~~ the person's license.
  - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark ~~which~~ that implies a relationship with the manufacturer which does not exist.
  - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter instrument dispenser, or to influence persons to refrain from dealing in the products of competitors.
  - (11) Sale of a hearing aid instrument to a person without adequate and proper audiometric testing.
  - (12) Sale of a hearing aid instrument to a person where the need for a hearing aid instrument has not been established after adequate and proper audiometric testing.
- d. Conducting business while suffering from a contagious or infectious disease.
  - e. Engaging in the fitting and sale of hearing aids instruments under a false name or alias with fraudulent intent.
  - f. For any violation of the provisions of this chapter.
  - g. The fitting and sale of a hearing aid instrument to any person under eighteen years of age or younger unless within six months prior to before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether or not there exist any physical deficiencies that would prohibit the effective use of a hearing aid instrument.
3. Appeals from suspension or revocation may be made under chapter 28-32.

SECTION 13. AMENDMENT. Section 43-33-13 of the North Dakota Century Code is amended and reenacted as follows:

43-33-13. Prohibited acts and practices. ~~No~~ A person ~~shall~~ may not:

1. Sell, barter or offer to sell or barter a license.
2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids instruments.
3. Alter a license with fraudulent intent.

4. Use or attempt to use as a valid license a license ~~which~~ that has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or application for renewal of a license.
6. Advertise without giving the registered business or personal name and business address or telephone number of the person.

SECTION 14. AMENDMENT. Section 43-33-14 of the North Dakota Century Code is amended and reenacted as follows:

43-33-14. Powers and duties of department board. ~~The powers and duties of the department are as follows~~ board shall:

1. ~~To authorize~~ Authorize all disbursements and collect fees necessary to carry out ~~the provisions of~~ this chapter.
2. ~~To supervise~~ Supervise issuance of licenses ~~"by experience"~~ and prepare and administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination.
3. ~~To register~~ Register persons who apply to the department board and who are qualified to engage in the fitting and sale of hearing ~~aids~~ instruments.
4. ~~To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in section 43-33-07-~~
- 5- ~~To issue~~ Issue and renew licenses.
- 6- ~~5. To suspend~~ Suspend or revoke licenses ~~in the manner provided.~~
- 7- ~~6. To designate~~ Designate the time and place for examining applicants.
- 8- ~~7. To appoint~~ Appoint representatives to conduct or supervise the examination.
- 9- ~~8. To make and publish~~ Adopt rules and regulations not inconsistent with the laws of this state which are necessary to carry out ~~the provisions of~~ this chapter.
- 10- ~~9. To appoint~~ Appoint or employ subordinate employees.

SECTION 15. AMENDMENT. Section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

43-33-15. Board of hearing aid dealers and fitters instrument dispensers.

1. There ~~shall be~~ is established a board of hearing aid dealers and fitters which ~~shall guide, advise and make recommendations to the department handling the license under~~ instrument dispensers to carry out this chapter.

2. Members of the board ~~shall must~~ be residents of the state. The board ~~shall consist~~ consists of ~~four hearing aid dealers and fitters, two otolaryngologists, and instrument dispensers~~ who are ~~not audiologists or otolaryngologists, one otolaryngologist, two audiologists, and one consumer~~. Each ~~hearing aid dealer and fitter instrument dispenser~~ on the board ~~shall must~~ be primarily engaged as a ~~hearing aid dealer and fitter, shall have had no less than instrument dispenser, must have at least five years of experience in this state, and shall must~~ hold a valid license as a ~~hearing aid dealer, as provided under this chapter. Exception shall be the hearing aid dealers and fitters of the first board appointed who shall have had no less than five years' experience and shall have fulfilled all qualifications for "license by experience" as provided by this chapter~~ instrument dispenser.
3. ~~All~~ The governor shall appoint the members of ~~such the board shall be appointed by the governor. The term of office of each member shall be for is~~ four years, ~~excepting that the members of the first board appointed under this chapter, two shall be appointed for two years, two shall be appointed for three years, and two shall be appointed for four years. Before a member's term expires, the governor shall appoint a successor to assume his the member's duties at the expiration of his predecessor's the term. A vacancy in the office of a member shall must be filled by appointment for the unexpired term. The members of the board shall annually designate one member to serve as chairman and another to serve as secretary-treasurer. No member of the board may be reappointed to the board until at least one year after the expiration of his that person's second term of office.~~
4. ~~Each~~ Except for the secretary-treasurer, ~~each member of the board shall serve without compensation but he shall receive such except~~ mileage and travel expenses while engaged in the performance of the duties of ~~his the~~ office as is provided for ~~general~~ state employees. ~~The board shall establish the amount of compensation for the secretary-treasurer.~~

SECTION 16. AMENDMENT. Section 43-33-17 of the North Dakota Century Code is amended and reenacted as follows:

43-33-17. Meetings of board. The board shall meet not less than ~~once~~ twice each year at a place, day, and hour determined by the board. The board shall also meet at such other times and places as ~~may be requested by the department~~ are necessary.

SECTION 17. REPEAL. Sections 43-33-05 and 43-33-16 of the North Dakota Century Code are repealed.

SECTION 18. EFFECTIVE DATE. This Act becomes effective on October 1, 1991.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 475

HOUSE BILL NO. 1519  
(Representatives Kroeber, Goffe, DeMers)  
(Senator Lindgren)

### ATHLETIC TRAINERS BOARD AUDITS

AN ACT to amend and reenact subsection 3 of section 43-39-02 of the North Dakota Century Code, relating to audits of the board of athletic trainers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-39-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The board each year shall elect one of its members as chairman and one as secretary-treasurer to the board. The board may make rules, in accordance with chapter 28-32 and not inconsistent with law, which may be necessary for the performance of its duties. The board may prescribe reasonable fees for application and examinations and for certificates of licensure. License fees shall be used for the purpose of paying the costs of per diem compensation and travel reimbursement to the board. In addition, fees and other moneys collected and received by the board shall be used for the purpose of implementing this chapter and may be used for continuing education purposes. The financial records of the board shall be audited ~~annually~~ once every two years. The audit is to be paid for out of the funds of the board.

Approved April 2, 1991  
Filed April 4, 1991

# OFFICES AND OFFICERS

## CHAPTER 476

SENATE BILL NO. 2408  
(Heigaard)

### ADVERSARIAL ADMINISTRATIVE PROCEEDINGS DEFINITION

AN ACT to amend and reenact subsection 6 of section 44-04-19.1 of the North Dakota Century Code, relating to the definition of "adversarial administrative proceedings" for the purpose of the exemptions to the open records and open meetings law for attorney work product and attorney consultations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 44-04-19.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency acts as a complainant or respondent in an adverse administrative proceeding ~~before another agency~~. This term does not refer to those instances where the administrative agency acts in its own rulemaking, ~~adjudicative, or quasi-judicial~~ capacity.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 477

SENATE BILL NO. 2363  
(Stenehjem)

### PUBLIC MEETING NOTICE

AN ACT to amend and reenact section 44-04-20 of the North Dakota Century Code, relating to notice of public meetings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-20 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-04-20. Notice of public meetings required - Exceptions - Schedule set by statute, ordinance, or resolution. Unless otherwise provided by law, public notice must be given in advance of all meetings governed by section 44-04-19, including conference call meetings. This notice must contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, shall not affect the validity of the meeting or the actions taken thereat. In cases where the public body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, must be filed annually in January, ~~for state-level bodies, with the main office of the public body and, if requested to do so by an interested party,~~ with the secretary of state for state-level bodies, the city auditor for city-level bodies, and the county auditor for all other public bodies. This schedule must be furnished to anyone who requests the information. In addition, every public body shall post public notice of each of its meetings at its principal office, if such exists, and at the location of the meeting. The public body's presiding officer shall have the responsibility of assuring that such public notice is given at the same time as such public body's members are notified, and that this notice is available to anyone requesting such information. In the event of emergency or special meetings of a public body, the person calling such a meeting shall notify representatives of the news media, if any, located where the meeting is to be held and which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such public body's members are notified. Where reasonable and practicable, a public body should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution. The attorney general shall prepare general guidelines to assist public bodies in following the provisions of this section. Unless otherwise specified by law, resolution, or ordinance, or as decided by the public body, notices required by this section do not have to be published. The provisions of section 12.1-11-06 do not apply to this section.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 478

SENATE BILL NO. 2570  
(Keller)

### OATH OF OFFICE FILING

AN ACT to create and enact a new section to chapter 44-05 of the North Dakota Century Code, relating to oaths of office; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-05 of the North Dakota Century Code is created and enacted as follows:

Place of filing oath of office. Unless otherwise provided by law, any public officer required to take an oath of office must file the oath as follows:

1. If a state official or member of a state board, with the secretary of state.
2. If a county official or member of a county board, with the county auditor.
3. If a city official or member of a city board, with the city auditor.
4. If a member of a district or political subdivision that is larger than a county, with the secretary of state.

SECTION 2. EFFECTIVE DATE. This Act is effective for terms of office that commence on or after January 1, 1992.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 479

HOUSE BILL NO. 1366  
(Representatives Mahoney, Henegar)  
(Senator Stenehjem)

### COURT OR OFFICER SEAL

AN ACT to amend and reenact section 44-08-06 of the North Dakota Century Code, relating to dimensions of the seal of a court or officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-06. Dimensions of seal of court or officer. Upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

Approved March 13, 1991  
Filed March 13, 1991



## CHAPTER 480

SENATE BILL NO. 2569  
(Marks)**RECALL SPECIAL ELECTION TIME**

AN ACT to amend and reenact section 44-08-21 of the North Dakota Century Code, relating to recall petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 44-08-21 of the 1989 Supplement to 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 for misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency by petition of electors equal in number to twenty-five percent of voters voting in the political subdivision at the last election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within ~~thirty~~ forty days if the official finds the petition valid and sufficient. No special election may be called if the 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 of the petition. Other candidates for the office may be nominated in a manner provided by law. 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.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Section 44-08-21 was also amended by section 2 of House Bill No. 1256, chapter 208.

# PARTNERSHIPS

## CHAPTER 481

HOUSE BILL NO. 1448  
(Payne, Kloubec)

### AMENDED PARTNERSHIP CERTIFICATES

AN ACT to amend and reenact section 45-11-05 of the North Dakota Century Code, relating to changing of names of fictitious partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-05. ~~Section~~ New Amended certificate required when members changed. Whenever there is a change in the general partners who are members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as general partners in the business, except in a case mentioned in section 45-11-03, a new certificate must be filed with the secretary of state as required by this chapter upon the formation of the partnership. The secretary of state shall receive the new certificate as an amended certificate and may not require the old certificate to be canceled.

Approved March 25, 1991  
Filed March 26, 1991

# PRINTING LAWS

## CHAPTER 482

HOUSE BILL NO. 1055  
(Legislative Council)  
(Interim Legislative Management Committee)

### LEGISLATIVE PRINTING

AN ACT to amend and reenact sections 46-02-04, 46-03-19, 46-04-17, and subsection 10 of section 54-09-02 of the North Dakota Century Code, relating to publication and distribution of the legislative journals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-02-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-04. Classes of printing - Contracts. The printing of the state is hereby divided into the following classes as follows:

1. The printing of legislative documents for the use of the legislative assembly ~~shall constitute~~ constitutes the first class. For the purposes of this subsection, the words "legislative documents" mean bills and resolutions. However, certain bills and resolutions may be excepted from this class, as directed by officers of the legislative assembly or as provided for in the rules of the senate and the house of representatives.
2. The printing and binding of the journals of the senate and the house of representatives ~~shall constitute~~ constitutes the second class.
3. The printing and binding of the reports and other documents required by state law to be prepared and submitted to the governor and the office of management and budget, and which make up the governmental biennial reports as prescribed by sections 54-06-03 and 54-06-04, ~~shall constitute~~ constitutes the third class. This class does not include the official budget report.
4. The printing and binding of the volumes of laws, ~~with such and legislative resolutions as shall be included in said volumes, shall constitute~~ constitutes the fourth class.
5. ~~Repealed by S.L. 1979, ch. 107, § 108.~~
6. All printing not included in the foregoing classes ~~shall constitute~~ constitutes the sixth class.

Separate contracts for each of classes 3 and 4 must be let by the office of management and budget under competitive bidding in accordance with the provisions of this title. Contracts for classes 1 and 2 must be let by competitive bidding by the office of management and budget in accordance with

the rules of the senate and the house of representatives of the state of North Dakota of the previous legislative session or as directed by the legislative council.

SECTION 2. AMENDMENT. Section 46-03-19 of the North Dakota Century Code is amended and reenacted as follows:

46-03-19. When documents officially printed - Faith and credit given. All laws, journals, and documents printed and published by any contractor under the provisions of this title, and duly certified by the secretary of state and the legislative council as provided herein, shall be in section 46-03-15 or rules of the senate and house of representatives, are deemed officially to be printed and published, and full faith and credit shall must be given to them as such.

SECTION 3. AMENDMENT. Section 46-04-17 of the North Dakota Century Code is amended and reenacted as follows:

46-04-17. Where laws, journals, and documents preserved. All copies of the journals, executive documents, and laws which are not distributed under the provisions of this title shall must be preserved in the office of the secretary of state, subject to distribution as provided by law or rules of the senate and house of representatives.

SECTION 4. AMENDMENT. Subsection 10 of section 54-09-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Immediately after the laws, resolutions, and journals of the legislative assembly are bound, distribute the same laws, resolutions, and journals to the persons entitled thereto under the provisions of the laws of this state by law or rules of the senate and house of representatives.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 483

HOUSE BILL NO. 1057  
(Legislative Council)  
(Interim Legislative Management Committee)

### LEGISLATIVE COUNCIL INFORMATION DUTIES

AN ACT relating to specifications for publication of the North Dakota Century Code; and to create and enact a new subsection to section 54-35-02 of the North Dakota Century Code, relating to powers and duties of the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Publication of the century code. The legislative council may establish specifications for publication of this code and contract with a publisher with respect to editorial, information processing, and publication services. The legislative council may continue any agreement with the publisher and may contract for continuing editorial work and publication services to assure continuity in editorial preparation, printing, and binding of supplements and replacement volumes of the code as long as the council deems it to the advantage and best interests of the state. Chapters 46-01 and 46-02 do not apply to any contract under this section.

SECTION 2. A new subsection to section 54-35-02 of the North Dakota Century Code is created and enacted as follows:

To determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents. This authority may not be exercised in a manner that contravenes access to legislative documents as otherwise provided by law.

Approved March 8, 1991  
Filed March 8, 1991

# PROPERTY

## CHAPTER 484

HOUSE BILL NO. 1100  
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

### RULE AGAINST PERPETUITIES

AN ACT to adopt the Uniform Statutory Rule Against Perpetuities; and to repeal sections 47-02-27, 47-02-31, 47-04-11, 47-04-12, and 59-05-36 of the North Dakota Century Code, relating to the rule against perpetuities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statutory rule against perpetuities - Invalidity of certain contingent property interests, general powers of appointment, special powers of appointment, and general testamentary powers of appointment.

1. A contingent property interest is invalid unless:
  - a. When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
  - b. The interest either vests or terminates within ninety years after its creation.
2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:
  - a. When the power is created, the condition precedent is certain to be satisfied or to become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or
  - b. The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.
3. A special power of appointment or a general testamentary power of appointment is invalid unless:
  - a. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
  - b. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.
4. In determining whether a contingent property interest or a power of appointment is valid under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3,

the possibility that a child will be born to an individual after the individual's death is disregarded.

5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to postpone the vesting or termination of any interest or trust until, disallow the vesting or termination of any interest or trust beyond, require all interests or trusts to vest or terminate no later than, or operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, then the portion of the language described in (b) is inoperative if and to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the lives specified in the portion of the language described in (a).

**SECTION 2.** When contingent property interest or power of appointment created.

1. Except as provided in subsections 2 and 3 of this section and in subsection 1 of section 5 of this Act, the time of creation of a contingent property interest or a power of appointment is determined under general principles of property law.
2. For purposes of this Act, if there is a person who alone can exercise a power created by a governing instrument to become an unqualified beneficial owner of a contingent property interest or a property interest subject to a power of appointment described in subsection 2 or 3 of section 1 of this Act, the contingent property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.
3. For purposes of this Act, a contingent property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the contingent property interest or power of appointment in the original contribution was created.

**SECTION 3.** Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed under subdivision b of subsection 1 of section 1 of this Act, subdivision b of subsection 2 of section 1 of this Act, and subdivision b of subsection 3 of section 1 of this Act, if:

1. A contingent property interest or a power of appointment becomes invalid under section 1 of this Act;
2. A class gift is not but might become invalid under section 1 of this Act and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. A contingent property interest that is not validated by subdivision a of subsection 1 of section 1 of this Act can vest but not within ninety years after its creation.

SECTION 4. Exclusions from statutory rule against perpetuities. Section 1 of this Act does not apply to:

1. A contingent property interest or a power of appointment arising out of a nondonative transfer, except a contingent property interest or a power of appointment arising out of a premarital or postmarital agreement, a separation or divorce settlement, a spouse's election, a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, a contract to make or not to revoke a will or trust, a contract to exercise or not to exercise a power of appointment, a transfer in satisfaction of a duty of support, or a reciprocal transfer.
2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.
3. A power to appoint a fiduciary.
4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.
5. A contingent property interest held by a charity, government, or governmental agency or subdivision, if the contingent property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision.
6. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or excluded by another statute of this state.

SECTION 5. Prospective application.

1. Except as extended by subsection 2, this Act applies to a contingent property interest or a power of appointment that is created on or after the effective date of this Act. For purposes of this section, a contingent property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.
2. If a contingent property interest or a power of appointment was created before the effective date of this Act and is determined in a judicial proceeding, commenced on or after the effective date of this Act, to violate this state's rule against perpetuities as that rule existed before the effective date of this Act, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the



rule against perpetuities applicable in the contingent property interest or power of appointment was created.

SECTION 6. REPEAL. Sections 47-02-27, 47-02-31, 47-04-11, 47-04-12, and 59-05-36 of the North Dakota Century Code are repealed.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 485

HOUSE BILL NO. 1320  
(Representatives G. Berg, Nicholas, Shide)  
(Senators Langley, Meyer)

### WETLANDS RESERVE EASEMENT DURATION

AN ACT to amend and reenact subsection 2 of section 47-05-02.1 of the North Dakota Century Code, relating to the duration of wetlands reserve program easements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-05-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The duration of the easement, servitude, or nonappurtenant restriction on the use of real property ~~shall~~ must be specifically set out, and in no case ~~shall~~ may the duration of any interest in real property regulated by this section exceed ninety-nine years. The duration of an easement for a waterfowl production area acquired by the federal government, and consented to by the governor or the appropriate state agency after July 1, 1985, may not exceed fifty years. The duration of a wetlands reserve program easement acquired by the federal government pursuant to the Food, Agriculture, Conservation, and Trade Act of 1990 after July 1, 1991, may not exceed thirty years.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 486

SENATE BILL NO. 2579  
(Holmberg, Stenehjem, Peterson, Marks, Schoenwald)  
(Approved by the Committee on Delayed Bills)

### ESCROW EXCESS ASSESSMENTS

AN ACT to provide for disposition of excess assessments for escrow accounts on residential real estate mortgage loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Borrower" means the obligor under a residential mortgage held by a secondary mortgagee.
2. "Excess amount" means any amount received in an escrow account during a calendar year in excess of three hundred dollars plus the amount necessary to pay real estate taxes, special assessments, and insurance premiums during that calendar year.
3. "Secondary mortgagee" means a successor mortgagee not residing or domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments, and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home.
4. "Servicer" means a person or entity maintaining an escrow account for a secondary residential mortgagee.

SECTION 2. Notice of excess escrow payments. If an escrow account is maintained by the servicer of a secondary residential mortgage for a secondary mortgagee, and the account contains an excess amount, the servicer shall provide written notice to the borrower, on or before March first of the following year, of the escrow account status. The information provided to the borrower must include the balance in the escrow account after the annual payment of taxes and special assessments.

SECTION 3. Application of excess escrow payments. Upon receipt of the written notice under section 2 of this Act, the borrower may, within thirty days after the date of the notice, elect in a written request to the servicer one of the following options:

1. Refund of all or part of the excess amount; or

2. Retention of all or part of the excess amount in the escrow account.

If the borrower does not advise the servicer in writing within the time provided in this section, the servicer may continue maintenance of the escrow account in the same manner until the next report to the borrower under this Act. If the borrower advises the servicer of an election within the time prescribed in this Act, the servicer must comply with the borrower's election within thirty days of the election.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 487

HOUSE BILL NO. 1328  
(Dorso, Carlson)

### **RESIDENTIAL LEASE RENEWAL PRESUMPTION**

AN ACT to create and enact a new section to chapter 47-16 of the North Dakota Century Code, relating to presumed renewal of leases of residential real property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-16 of the North Dakota Century Code is created and enacted as follows:

Automatic renewal of leases of residential real property - When notice required. Notwithstanding the provisions of section 47-16-06, in any lease of a specified term of two months or more of real property used for residential purposes, the lessor may not enforce an automatic renewal clause of a lease unless the lessor has notified the lessee in writing, delivered personally or by first-class mail, of the automatic renewal provision, not less than thirty days prior to the expiration date of the current lease. If such notice has not been given, the lease expires, and the terms of the latest lease convert to a month-to-month tenancy.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 488

SENATE BILL NO. 2353  
(Senators Nalewaja, Redlin)  
(Representative Nicholas)

### HOMESTEAD EXEMPTION WAIVER NOTICE

AN ACT to amend and reenact subsection 1 of section 47-18-05.1 of the North Dakota Century Code, relating to notice of waiver of homestead exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-18-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. All mortgages on homesteads A mortgage on a homestead which is executed after June 30, ~~1987~~ 1991, and which are is not a purchase money ~~agreements~~ contract must contain the following statement printed in a conspicuous manner and must be signed and dated by the person waiving the exemption at the time the contract is executed:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

This statement must be immediately followed by the date and the signature of the person to indicate that the person is specifically and knowingly waiving the exemption, which must be a separate signature from that person's signature to the entire mortgage contract.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 489

SENATE BILL NO. 2409  
(Dotzenrod)

### FENCE VIEWERS

AN ACT to amend and reenact sections 47-26-02, 47-26-04, and 47-26-19 of the North Dakota Century Code, relating to elimination of the duty of county commissioners to act as fence viewers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-26-02 of the North Dakota Century Code is amended and reenacted as follows:

47-26-02. Fence viewers. In an organized township, the members of the board of township supervisors shall act as fence viewers; ~~and in territory which is not organized into civil townships, the members of the board of county commissioners shall act in such capacity.~~

SECTION 2. AMENDMENT. Section 47-26-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-26-04. Fees of fence viewers. Each township supervisor ~~or county commissioner~~ may be paid by the employing person ~~employing him~~, at the rate of no more than fifteen dollars per day for the time ~~he is~~ employed as a fence viewer. If such person neglects to pay such fees within thirty days after the service is performed, the township supervisor ~~or county commissioner~~ may recover the amount thereof in a civil action.

SECTION 3. AMENDMENT. Section 47-26-19 of the North Dakota Century Code is amended and reenacted as follows:

47-26-19. Fence viewers neglecting to perform duty - Penalty. A township supervisor ~~or a member of the board of county commissioners~~, who unreasonably neglects to view a fence after having been requested to do so, or who refuses to perform any other duty required ~~of him~~ under the provisions of this chapter, shall forfeit the sum of five dollars and shall be liable to the party injured for all damages consequent upon such neglect.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 490

SENATE BILL NO. 2216  
(Committee on Judiciary)  
(At the request of the Board of University and School Lands)

### ABANDONED PROPERTY LISTS AND NOTICES

AN ACT to amend and reenact subsection 12 of section 47-30.1-01, section 47-30.1-18, and subsection 1 of section 47-30.1-19.1 of the North Dakota Century Code, relating to the definition of "person", publication requirements for abandoned property, and abandoned property lists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 47-30.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Person" means an individual, business association, state or other government including the government of the United States, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

SECTION 2. AMENDMENT. Section 47-30.1-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-18. Notice and publication of lists of abandoned property.

1. The administrator shall cause a notice to be published not later than March first of the year immediately following the report required by section 47-30.1-17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.
2. The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:
  - a. The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1.
  - b. A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.



3. The administrator is not required to publish in the notice any items of less than fifty dollars unless the administrator considers their publication to be in the public interest.
4. ~~Not later than March first, or in the case of property reported by life insurance companies, not later than September first, of the year immediately following the report required by section 47-30.1-17, the administrator shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the administrator has a last known address.~~
5. ~~The mailed notice must contain:~~
  - a. ~~A statement that, according to a report filed with the administrator, property is being held to which the addressee appears entitled.~~
  - b. ~~The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.~~
  - c. ~~A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the administrator and all further claims must be directed to the administrator.~~
- 6- 4. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed abandoned under section 47-30.1-19.

SECTION 3. AMENDMENT. Subsection 1 of section 47-30.1-19.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. One list must refer to all property unclaimed funds of fifty dollars or more in the administrator's custody and must contain the name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 491

HOUSE BILL NO. 1099  
(Committee on Finance and Taxation)  
(At the request of the Board of University and School Lands)

### CHECK AND DEPOSIT DORMANCY

AN ACT to create and enact section 47-30.1-02.1 of the North Dakota Century Code, relating to the dormancy period for uncashed checks; and to amend and reenact subsection 1 of section 47-30.1-06 of the North Dakota Century Code, relating to the dormancy period for deposits with banking and financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 47-30.1-02.1 of the North Dakota Century Code is created and enacted as follows:

47-30.1-02.1. Uncashed checks. Except as provided in sections 47-30.1-04 and 47-30.1-05, any checks held, issued, or owing in the ordinary course of the holder's business which remain uncashed by the owner for more than two years after becoming payable are presumed abandoned.

SECTION 2. AMENDMENT. Subsection 1 of section 47-30.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless, in the case of a matured time deposit, the banking or financial organization has mailed, at least once every ~~seven~~ five years certified mail, requesting a return receipt, to the owner and the receipt has been returned and signed by the addressee, or unless the owner, within ~~seven~~ five years has:
  - a. In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
  - b. Communicated in writing with the banking or financial organization concerning the property;
  - c. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;
  - d. Owned other property to which subdivision a, b, or c applies and if the banking or financial organization communicates in

writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

- e. Had another relationship with the banking or financial organization concerning which the owner has:
- (1) Communicated in writing with the banking or financial organization; or
  - (2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 492

SENATE BILL NO. 2095  
(Committee on State and Federal Government)  
(At the request of the Attorney General)

### UNCLAIMED PROPERTY PROCEDURES

AN ACT to create and enact section 47-30.1-03.1 of the North Dakota Century Code, relating to recovery of unclaimed property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 47-30.1-03.1 of the North Dakota Century Code is created and enacted as follows:

47-30.1-03.1. Property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, or created in this state.

1. All intangible property, including any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within three years after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:
  - a. The address of the owner is unknown; and
  - b. The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or is incorporated, organized, or created in this state.
2. The provisions of subsection 1 do not apply to property that is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different from that prescribed in subsection 1.
3. The provisions of subsection 1 apply to all property held on the effective date of this Act, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

Approved March 18, 1991  
Filed March 19, 1991

# PUBLIC BUILDINGS

## CHAPTER 493

HOUSE BILL NO. 1442  
(St. Aubyn, Svedjan)

### PUBLIC IMPROVEMENT CONTRACTORS' BONDS

AN ACT to amend and reenact section 48-01-01 of the North Dakota Century Code, relating to bond requirements on contracts for public buildings or improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01-01. Bonds from contractors for public improvements. Every public officer or board authorized to enter into a contract for the erection, repair, or alteration of any public building or any other public improvement, except a municipal improvement made under special assessment statutes, before permitting any work to be done on that contract, shall take from the contractor a good and sufficient bond. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials, including supplies used for machinery and motor power equipment, performed, furnished, and used in and about the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest, of the amount authorized under section 13-01-14, be paid on bills and claims not paid within ninety days. The bond stands as security for all such bills, claims, and demands until fully paid, with preference to labor and materialmen as to payment. The bond must run to this state, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, on account of labor, materials, or supplies, or for a breach of the contract, may sue on the bond. The mandatory bond requirement of this section only applies to contracts under which the total estimated cost of all work involved amounts to more than twenty-five thousand dollars for the completed project.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 494

SENATE BILL NO. 2455  
(Wogsland, Langley, Schoenwald)

### PUBLIC CONTRACT BIDDING METHODS

AN ACT to amend and reenact subsection 4 of section 48-02-04 and section 48-02-05.1 of the North Dakota Century Code, relating to bid requirements and acceptance for building and repair contracts and contents of bid advertisements and awarding contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 48-02-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~That the bids may be submitted as bids for the single project; individual bids for general, electrical, and mechanical contracts; or bids for other portions of the project. The type of bids as required by section 48-02-05.1.~~

SECTION 2. AMENDMENT. Section 48-02-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-02-05.1. Bid requirements and acceptance. Competitive bids for the work for which plans, drawings, and specifications are required by section 48-02-02 ~~may~~ must be allowed to be submitted as multiple prime bids for the ~~single project; individual bids for~~ general, electrical, and mechanical contracts, when applicable. In addition to the required multiple prime bids, the governing board may also allow submission of single prime bids or bids for other portions of the project. Determining bids for other portions of the project is the responsibility of the governing board. The governing board may not accept the single project prime bid unless that bid is lower than the combined total of the lowest and best bids for general, electrical, and mechanical the contracts.

Approved March 15, 1991  
Filed March 15, 1991

## CHAPTER 495

SENATE BILL NO. 2556  
(Krebsbach, Nething)

### FUEL COST ADJUSTMENT CLAUSES

AN ACT to provide for fuel cost line item and fuel cost adjustment clause inclusion in any construction contract entered by the state or a political subdivision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Public contract to contain a fuel cost line item and a fuel cost adjustment clause. Any public contract, as defined by section 43-07-01, for which submission of bids is required by law must contain a fuel cost line item and a fuel cost adjustment clause based on the costs of motor fuels and heating fuels consumed in completing the contract work. The director of the department of transportation shall make available to any affected agency fuel cost adjustment clause provisions and computations as are used by the department in its construction contracts. This section applies if the amount of the fuel expected to be used is twenty thousand gallons [75708 liters] or more.

SECTION 2. APPLICATION. This Act applies to all contracts entered into after the effective date of this Act.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 496

HOUSE BILL NO. 1266  
(Representatives St. Aubyn, Schindler, Tollefson)  
(Senators Kelly, Stenehjem)

### ENERGY EFFICIENCY CONTRACTS

AN ACT to allow governmental units to enter energy efficiency performance-based contracts to provide guaranteed energy savings in buildings owned by governmental units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Energy conservation measure" means a training program or facility alteration intended to reduce energy consumption or operating costs, including the following:
  - a. Insulation of the building or any structure associated with the building.
  - b. Window or door modifications that reduce energy consumption.
  - c. Automatic energy control systems.
  - d. Replacement or modification to increase the energy efficiency of the lighting, heating, air-conditioning, or ventilating system.
  - e. Energy recovery or cogeneration systems.
2. "Governmental unit" means any instrumentality of state government or any political subdivision of the state.
3. "Guaranteed energy savings contract" means a contract for energy conservation measures which provides that energy cost savings are guaranteed to the extent necessary to make payments for the recommended energy conservation measures.
4. "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.
5. "Request for proposals" means a procurement announcement through a public notice from a governmental unit, which will administer the program, detailing the work, service, or supplies needed for an energy conservation measure. The request for proposals must include:



- a. The name and address of the governmental unit.
- b. The name, address, title, and phone number of a contact person.
- c. The response due date and time deadline.
- d. The scope of the project.
- e. The project completion deadline.
- f. The criteria for awarding a contract.
- g. The right to reject the request for proposals.
- h. Other stipulations and clarifications as required.

SECTION 2. Energy conservation measure recommendations. Before entering into a contract under section 3 of this Act, a governmental unit shall submit a request for proposals. Upon receipt of the request for proposals, the governmental unit shall evaluate all reports from qualified providers which summarize estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced. If technical assistance is not available by a licensed architect or registered professional engineer on the governmental unit staff, then the evaluation of this report must be done by a registered professional engineer or architect, who is to be retained by the governmental unit. The governmental unit may pay a reasonable fee for preparation of the report or include the fee as part of a contract under section 3 of this Act.

SECTION 3. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 2 of this Act, a governmental unit may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ten years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. A qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract. The guaranteed energy savings contract may provide for payments over a period not exceeding five years.

SECTION 4. Competitive bidding and architect and engineering services. Guaranteed energy savings contracts are not subject to the requirements of chapter 48-02, which relate to competitive bidding, and are not subject to section 43-19.1-28.

SECTION 5. Appropriations for contract payments. The governmental unit shall include in its annual appropriations measure for each later biennium or fiscal year any amounts payable under guaranteed energy savings contracts during the biennium or fiscal year.

Approved April 10, 1991  
Filed April 10, 1991

# PUBLIC UTILITIES

## CHAPTER 497

HOUSE BILL NO. 1123

(Committee on Natural Resources)

(At the request of the Public Service Commission)

### PIPELINE SAFETY

AN ACT to amend and reenact sections 49-02-01.2 and 49-07-05.1 of the North Dakota Century Code, relating to the jurisdiction of the public service commission regarding hazardous facility orders and pipeline safety and an increase in fines for violations of pipeline safety standards; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-02-01.2. Pipeline safety - Public service commission jurisdiction - Hazardous facility orders.

1. The commission, by rule, may establish and enforce minimum safety standards for the design, construction, and operation of gas distribution facilities and intrastate pipeline facilities used for the distribution and intrastate transportation of gas, liquefied natural gas, or hazardous liquids, regardless of whether they are owned or operated by a public utility, in order to ensure the reasonable safety thereof. Any rule issued under this section affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such rule is adopted. Such rules shall not be more stringent than the corresponding federal regulations applicable to interstate pipelines and related facilities.
2. If the commission determines that a pipeline facility is hazardous to life or property, it may issue an order requiring the operator of the facility to take corrective action. The commission may issue such an order without notice and opportunity for hearing if the commission determines that to do otherwise would result in the likelihood of serious harm to life or property. The Commission shall include in such an order an opportunity for hearing as soon as practicable after issuance of the order.

SECTION 2. AMENDMENT. Section 49-07-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-07-05.1. Violations of pipeline safety standards - Penalties. Any person who violates any rule or order issued by the commission pursuant to section 49-02-01.2, shall be subject to a civil penalty to be imposed by the

for each day that such violation persists, except that the maximum penalty shall not exceed ~~two~~ five hundred thousand dollars for any related series of violations. Any such civil penalty may be compromised by the commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the nature, circumstances, and gravity of the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, the ability to pay the penalty, the good faith of the person charged in attempting to achieve compliance, after notification of a violation, and such other matters as justice may require, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state of North Dakota to the person charged or may be recovered in a civil action in the district court of Burleigh County.

Approved March 25, 1991  
Filed March 26, 1991

**CHAPTER 498**

SENATE BILL NO. 2286  
(Senators O. Hanson, Nalewaja, Meyer)  
(Representatives D. Olsen, Belter, Dalrymple)

**UTILITY SERVICE TAMPERING PENALTY**

AN ACT to amend and reenact subsection 3 of section 49-04.1-02 of the North Dakota Century Code, relating to damages for bypassing, tampering, or unauthorized metering of utility services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 49-04.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In any civil action brought pursuant to this section, the utility is entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover one thousand dollars or three times the amount of the actual loss, whichever is greater, caused by the bypassing, tampering, or unauthorized metering, plus all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employees and equipment, expert witnesses, costs of the suit, and reasonable attorneys' fees.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 499

HOUSE BILL NO. 1377  
(Kretschmar)

### UTILITY PROPERTY CONVEYANCE RECORDING

AN ACT to amend and reenact section 49-09-15 of the North Dakota Century Code, relating to the recording of conveyances of utility real property other than right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-09-15. Conveyance of real property other than right of way - Recording. Every such conveyance, lease, deed of trust, or mortgage, made by a public utility which covers any real property other than that used by such public utility as a right of way for its railway, telecommunications lines, or gas or oil pipelines, also ~~shall~~ must, in order to obtain the priority created by section 47-19-41, be recorded in the office of the register of deeds for each county wherein such other real estate, or any part thereof, is situated. ~~Such conveyance, lease, deed of trust, or mortgage shall not operate as a conveyance of, nor as creating any lien upon, any such real estate other than the right of way, until such instrument has been duly recorded in the office of the register of deeds of the county in which the same is situated.~~

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 500

SENATE BILL NO. 2317  
(Senators Stenehjem, Robinson)  
(Representatives Kretschmar, Meyer)

### **UNAUTHORIZED RAILROAD PASSENGER INJURIES**

AN ACT to create and enact a new section to chapter 49-16 of the North Dakota Century Code, relating to the liability of a railroad owner or operator for injury of a person riding on a locomotive or railroad car without authority from the owner or operator of the railroad.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-16 of the North Dakota Century Code is created and enacted as follows:

Liability of owner or operator of railroad limited. A person who is injured while boarding or attempting to board a moving locomotive or railroad car, without authority from the owner or operator of the railroad, or who having boarded a locomotive or railroad car without authority from the owner or operator of the railroad, is injured while riding or getting off the locomotive or railroad car, may not recover any damages from the owner or operator of the railroad for that injury unless the injury is proximately caused by an intentional act of the railroad owner or operator and the railroad owner or operator knew that serious injury was the probable result of the act, or that the owner or operator of the railroad acted with wanton and reckless disregard of the probable result of the act. This Act does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employer's Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 501

HOUSE BILL NO. 1095  
(Committee on Industry, Business and Labor)  
(At the request of the Governor)

### TELECOMMUNICATIONS OPERATOR ACCESS

AN ACT to create and enact a new section to the North Dakota Century Code, relating to the access of operator services of telecommunications companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to the North Dakota Century Code is created and enacted as follows:

Access code number usage. A person who, in the ordinary course of operations, makes telephones available to the public or to transient users of that person's premises, for intrastate telephone calls using a provider of operator services shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "800", "950", or "10XXX 0+" access code numbers to obtain access to the provider of operator services desired by the consumer. Each such person shall ensure that no charge to the consumer for using an "800", "950", or "10XXX 0+" access code number is greater than the amount charged for calls placed using the presubscribed provider of operator services.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 502

HOUSE BILL NO. 1556  
(Representatives Cleary, Mutzenberger)  
(Senators Evanson, Marks)

### CALL IDENTIFICATION SERVICES

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to call identification services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications company or rural telephone cooperative must allow a caller, at least on a per call basis, to withhold, at no cost to the caller, display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.
2. The telecommunications company or rural telephone cooperative may not charge any caller who requests that that person's telephone number be withheld from the recipient of any call placed by the caller.
3. A telecommunications company or rural telephone cooperative offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered. In the case of a telecommunications company or rural telephone cooperative presently offering a call identification service, notice must be given within thirty days of the effective date of this Act.
4. This Act does not apply to:
  - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
  - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
  - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.
  - d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 503

HOUSE BILL NO. 1557  
(Representatives B. Anderson, Martin)  
(Senators O'Connell, DeKrey)

### TELEPHONE COOPERATIVE PLANT SALE

AN ACT relating to approval of sale of the physical plant of a telephone cooperative.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Telephone cooperatives - Sale of physical plant - Approval. No mutual aid cooperative or cooperative association that is a telecommunications company as defined in section 49-21-01 may sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of the cooperative, based upon the most recent audit of the books of the cooperative, unless consent has been obtained by vote of not less than two-thirds of the entire membership of the cooperative cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of the cooperative not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this section prohibits the transfer of assets in exchange for physical plant of equal monetary value to any public or private person or organization.

Approved March 8, 1991  
Filed March 8, 1991

# PUBLIC WELFARE

## CHAPTER 504

HOUSE BILL NO. 1553  
(Representatives Flaagan, Scherber, Price)  
(Senator Mathern)

### COUNTY HUMAN SERVICES FUND

AN ACT to amend and reenact sections 50-01-01, 50-02-05, 50-03-01, 50-03-02, 50-03-03, 50-03-04, 50-03-05, 50-03-06, 50-03-07, 50-06.2-05, and subsection 34 of section 57-15-06.7 of the North Dakota Century Code, relating to the human services fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-01-01 of the North Dakota Century Code is amended and reenacted as follows:

50-01-01. County obligated to support poor - Eligibility for assistance - Transfer of property as security for assistance. Within the limits of the county ~~poor relief~~ human services appropriation therefor, and utilizing reimbursement under section 50-01-09.2, each county in this state is obligated, upon receipt of a written application on a form prescribed by the department of human services, to relieve and support persons who are residents of the county and who are in need of poor relief. To be eligible for such relief, the applicant:

1. May not at any time before or after making application for county poor relief have made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this chapter.
2. Shall comply with the written eligibility standards for county poor relief established by the county social service board. A copy of the written standards must be available upon request. Pursuant to this requirement, the ownership of real or personal property by an applicant for county poor relief, or by the spouse of such applicant, either individually or jointly, or of insurance on the life of the applicant does not preclude the granting of such relief if the applicant is without funds for his support. However, as a condition to the granting of county poor relief, the applicant may be required to transfer such property in trust by appropriate instrument as security for relief the applicant may thereafter receive, unless the property consists of one of the following:
  - a. A homestead.
  - b. A life insurance policy having a cash surrender value of less than three hundred dollars.

- c. Personal property of a value less than three hundred dollars, not including household goods, wearing apparel, and personal effects, such as money.
- d. Property selected by the applicant having a value of less than three hundred dollars.
- e. Real or personal property held in trust for the applicant by the federal government.
- f. Real or personal property on which the taking of security may be prohibited through legislation enacted by the Congress of the United States.

SECTION 2. AMENDMENT. Section 50-02-05 of the North Dakota Century Code is amended and reenacted as follows:

50-02-05. Residence in county - How acquired after relief given. If any person who has not acquired residence within the state, or within a county within the state, for poor relief purposes, receives any type of poor relief or public assistance or becomes an inmate of any hospital, poorhouse, jail, prison, or other public institution, or receives any aid or relief from the poor human services fund of any county, or from funds provided by the state or federal government, the period of time under which residence may be acquired begins with the date of the last type of aid or poor relief or other assistance which was given, or the date of discharge from any such institution.

SECTION 3. AMENDMENT. Section 50-03-01 of the North Dakota Century Code is amended and reenacted as follows:

50-03-01. Board of county commissioners may levy poor human services tax. The board of county commissioners, if it deems it expedient, annually at its session at which the county tax is ordered to be levied and assessed, may levy and assess a human services tax for the support of the poor of needy persons in its county.

SECTION 4. AMENDMENT. Section 50-03-02 of the North Dakota Century Code is amended and reenacted as follows:

50-03-02. County poor relief human services fund. Each county in this state shall maintain a fund to be known as the county poor relief human services fund into which the county treasurer, immediately upon receipt thereof, shall pay that proportion of the tax receipts which the county poor relief human services appropriation bears to the total county appropriations.

SECTION 5. AMENDMENT. Section 50-03-03 of the North Dakota Century Code is amended and reenacted as follows:

50-03-03. Relief expenditures paid from poor relief human services fund. All expenditures by the county for the relief of the poor needy must be paid out of the county poor relief human services fund. Such The fund ~~shall~~ is not be subject to any other charges and is exempt from the provisions of section 21-02-08.

SECTION 6. AMENDMENT. Section 50-03-04 of the North Dakota Century Code is amended and reenacted as follows:

50-03-04. Transfer of money to poor relief human services fund. If the human services appropriation made by a board of county commissioners for poor relief purposes is not sufficient to meet the expenditures required by law, the county auditor, on order of the board of county commissioners, may make a transfer to the county poor relief human services fund from any other fund, except sinking and interest funds set aside to pay the principal or interest on outstanding bond issues, or funds set aside to retire any other outstanding indebtedness.

SECTION 7. AMENDMENT. Section 50-03-05 of the North Dakota Century Code is amended and reenacted as follows:

50-03-05. Emergency expenditures - Special warrants. If the unexpended balance in any fund or funds of the county which may be transferred to the county poor relief human services fund is insufficient to meet an emergency created by unusual and unanticipated demands for the relief of the poor on the human services fund, the board of county commissioners, by resolution, may authorize the expenditure of an amount in excess of budget appropriations and may obligate the county in excess of such appropriations for the purpose of replenishing the poor relief human services fund. For such emergency expenditures, the county auditor immediately shall issue special warrants to be known and designated as "warrant for emergency poor relief human services". The provisions of section Section 21-02-08 do does not apply to such emergency expenditures.

SECTION 8. AMENDMENT. Section 50-03-06 of the North Dakota Century Code is amended and reenacted as follows:

50-03-06. Expenditure of total county appropriation - How appropriation following year determined. If the board of county commissioners of any county, due to an emergency, expends in any one year such an amount for poor relief human services purposes that the total county appropriations for that year are exceeded, the appropriations for the following year, to make up the deficit caused by such expenditures, shall not be included within the appropriations subject to the tax levy limitation for general county purposes provided by law.

\* SECTION 9. AMENDMENT. Section 50-03-07 of the North Dakota Century Code is amended and reenacted as follows:

50-03-07. Appropriation for food stamp program administration - Financial agreement. Subject to subsection 18 of section 50-06-05.1, the board of county commissioners of each county annually shall appropriate and make available to the poor relief human services fund an amount sufficient to pay the local expenses of administration of the food stamp program and shall enter into a food stamp financial agreement with the department of human services.

SECTION 10. AMENDMENT. Section 50-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

50-06.2-05. Appropriation of county funds. The board of county commissioners of each county shall annually appropriate and make available to the poor relief human services fund an amount sufficient to pay the local expenses of administration and provision of the human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies

\* NOTE: Section 50-03-07 was also amended by section 7 of Senate Bill No. 2268, chapter 328.

under the provisions of this title. For purposes of this section, the board of county commissioners may levy an annual tax for ~~poor relief~~ human services purposes not exceeding the limitation in subsection 34 of section 57-15-06.7, and if this amount is not sufficient, may levy for deficiency purposes under chapter 50-03.

SECTION 11. AMENDMENT. Subsection 34 of section 57-15-06.7 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34. Counties levying an annual tax for ~~poor relief~~ human services purposes as provided in section 50-06.2-05 may levy a tax not exceeding twenty mills.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 505

HOUSE BILL NO. 1160  
(Committee on Political Subdivisions)  
(At the request of the Department of Human Services)

### COUNTY SOCIAL SERVICE BOARD MEMBER REMOVAL

AN ACT to amend and reenact section 50-01-10 of the North Dakota Century Code, relating to the removal of members of county social service boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-01-10 of the North Dakota Century Code is amended and reenacted as follows:

50-01-10. Removal of members of the board. A member of the county social service board may be removed without cause by resolution to that effect adopted by the board of county commissioners ~~and the department of human services. The resolution may be initiated either by the board of county commissioners or the department of human services.~~

Approved March 25, 1991

Filed March 26, 1991

## CHAPTER 506

SENATE BILL NO. 2033  
(Legislative Council)

(Interim Budget Committees on Long-Term Care and Human Services)

### MULTICOUNTY SOCIAL SERVICE DISTRICTS

AN ACT to create and enact a new section to chapter 50-01.1 of the North Dakota Century Code, relating to financial incentives provided by the department of human services for creating multicounty social service districts; to amend and reenact sections 50-01.1-01, 50-01.1-02, 50-01.1-03, and 50-01.1-04 of the North Dakota Century Code, relating to multicounty social service districts; and to provide an appropriation from the state aid distribution fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-01.1 of the North Dakota Century Code is created and enacted as follows:

Financial incentives for creation of multicounty social service districts. The state department, within the limits of legislative appropriations and in accordance with rules adopted by the department, shall provide financial incentives for the creation of multicounty social service districts pursuant to plans approved as provided in section 50-01.1-03. The incentives may be based upon achieved economies of scale, adherence to caseload standards for economic assistance and social service functions, reduced administrative costs, specialized qualifications of staff, and quality of services provided. Financial incentives are limited to a six-year period and must be phased out during the last three years of the period. The incentives may be extended beyond the six-year period, at the discretion of the state department, to promote appropriate expansion of established districts. In addition, the state department shall pay for the costs incurred by counties in the development of multicounty social service districts, including related travel and materials costs. The department shall make the payments in reimbursement of the relevant costs upon approval of applications that comply with requirements established by rules adopted by the department.

SECTION 2. AMENDMENT. Section 50-01.1-01 of the North Dakota Century Code is amended and reenacted as follows:

50-01.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "County board agency" means the county social service boards board.
2. "State department" means the department of human services.

SECTION 3. AMENDMENT. Section 50-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

50-01.1-02. Consolidation of county boards agencies into multicounty welfare social service districts. In order to provide optimum services service, reduce program costs, and benefit recipients of social services within this state, any county board may two or more counties, by agreement entered into through action of their boards of county commissioners, may combine and consolidate with the county board or boards of any contiguous county or counties their county agencies into a multicounty social service district in the manner provided in this chapter in order to form a multicounty welfare district. Such multicounty welfare. Multicounty social service districts shall succeed to all the powers and duties enumerated for county boards agencies, and shall perform all the functions and responsibilities assigned to such county boards agencies by this title. Where consistent with the provisions of this chapter, all provisions relating to county boards agencies contained in this title apply to and govern multicounty welfare social service districts. Any The board of county commissioners of any county board wishing desiring to become a member of a multicounty welfare social service district shall file with the state department a written request for such membership with the state department, together with a plan for the creation of such a district, if such a district does not already exist. The plan must be prepared as prescribed in section 50-01.1-04. The request must be approved or disapproved by the state department, with the determination being made in accordance with the provisions of section 50-01.1-03. In permitting the creation of such a district, the state department shall, to as great a degree as possible, allow the consolidation of county boards agencies in such a manner as will:

- 1- Conform conform with the existing pattern of the trade area-
- 2- Conform and with any regional pattern established by the executive department of this state.

SECTION 4. AMENDMENT. Section 50-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

50-01.1-03. Manner of determination - Notices - Hearings. In determining whether the creation of a multicounty welfare social service district should be approved, the state department shall refer to, among other pertinent factors, the following:

1. Whether the affected county boards agencies are able to supply an adequate level and quality of social and economic assistance services.
2. The number and qualifications of staff personnel serving the affected county boards agencies.
3. The ratio of the number of cases handled by the affected county boards agencies to the number of their staff personnel.
4. The geographical area and population served by the affected county boards agencies.
5. The distance of recipients from the affected county boards agencies.



6. The benefits ~~which that~~ would be realized from the creation of ~~such~~ the district in terms of lower costs, increased availability of services, new services, and improvement of services.

Any county ~~which that~~ is denied approval to become a member of a multicounty ~~welfare social service~~ district, ~~or any member of that board, shall have the right to may~~ request a hearing thereon. ~~Such county~~ The state department shall notify the board ~~must be notified of such county commissioners of the right by the state department, and shall have to appeal.~~ The board has thirty days from the time after receipt of the notice to request ~~such~~ a hearing. If a hearing is requested, ~~it must be scheduled by the state department shall hold the hearing within fifteen days after receipt of the request for the same, and it must be held at the state capitol.~~ At the hearing, evidence may be presented relative to the creation of the proposed multicounty ~~welfare social service~~ district. The hearing must be conducted in accordance with the applicable provisions of chapter 28-32.

SECTION 5. AMENDMENT. Section 50-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

50-01.1-04. Plan - Financing - Distribution of property - Governing board - Compensation of members.

1. A plan for the creation of a multicounty ~~welfare social service~~ district ~~prepared by a county board must provide for~~ describe the method of operation of the ~~consolidated district office, its administration, its location and the location of any ancillary offices, the disbursements from public funds, and the accountability of for funds and manner of reporting receipts and disbursements.~~ The plan must provide that all services provided by county officials to county ~~boards agencies~~ under the provisions of this code must be provided by those county officials residing within the same county wherein the district office of the multicounty ~~welfare social service~~ district is located. The plan must also provide for the distribution of property owned by each of the county ~~boards agencies~~ affected by the consolidation; and for the method of resolution of any disagreement between the boards of county commissioners involved in the multicounty district or between the governing board and one or more boards of county commissioners. The plan, once approved, may be continued for a definite term or until rescinded or terminated in accordance with its terms. The plan may also provide that the regional director of a regional human service center shall serve as the director of the multicounty ~~welfare social service~~ district.
2. The governing board of the multicounty social service district annually shall prepare a proposed budget for the district at the time and in the manner in which a county budget is adopted and shall submit the proposed budget to the board of county commissioners of each county in the district for approval. The amount budgeted and approved must be sufficient to defray the anticipated expenses of administration and the delivery of social and economic assistance services, exclusive of grants, and must be prorated among the counties based on an agreed to cost distribution formula that takes into consideration such factors as caseload, population, taxable valuation, and geographical area of the respective counties comprising the district. Within ten days

following approval of the proposed budget by the boards of county commissioners, the governing board of the district shall certify the budget to the respective county auditors of the counties in the district, and this amount must be included in the levies of the counties. Each board of county commissioners also shall budget and approve amounts sufficient to defray that county's anticipated costs of poor relief and that county's share of grants as provided under this title. The amounts budgeted and approved by the several boards of county commissioners must be periodically deposited with the treasurer of the county in which the district office is located, as may be requested by the treasurer, and must be placed in a special multicounty social service district fund. The governing board, or its president and secretary when authorized by the governing board, shall audit all claims against the fund. The governing board at its regularly scheduled meeting shall approve or ratify all claims against the fund. The county treasurer shall pay approved or ratified claims from the fund. Unexpended funds remaining at the end of a fiscal year may be carried over to the next fiscal year.

3. The governing board of a multicounty welfare social service district shall consist consists of seven, nine, or eleven not more than fifteen members, as determined by the plan. The plan must provide that there must be appointed as members to such the board from each respective county, the number of members in the ratio that each county's population bears to the total population of the multicounty welfare social service district; provided, that each county to be included in such district must be represented by at least one board member. Appointments must be made by committees created in The board of county commissioners of each county included in the within the multicounty social service district, and composed of the chairman of the board of county commissioners, the county judge, and the state's attorney of each such county acting with the advice and consent of the state department shall make the appointments to the governing board. Members must be appointed for a term of three years, or until a successor has been appointed and qualifies. However, the members appointed to the initial governing board of a multicounty district must be appointed to staggered terms determined in accordance with the plan approved pursuant to section 50-01.1-03. Each member of the governing board shall qualify by taking the oath prescribed for civil officers and filing the same oath with the county auditor in his of the county of residence. No person may serve as a board member for more than two three consecutive three-year terms. No person may be appointed to the board who has served within three years prior to appointment, unless he is being reappointed to a second consecutive term. Vacancies occurring on the board must be filled in the same manner as regular appointments, provided, however, that a person appointed to fill the unexpired term of a member is eligible for appointment to another term only if his consecutive service on the board after completion of such term will not exceed six years. No person is eligible for appointment if he would become seventy-one years of age or older before the end of such term. Each sex must be fairly represented on the board, and each county must be represented on the board by at least one county commissioner of that county. Members shall elect from the governing board a president, a secretary, and other officers as the board deems necessary.

~~3-~~ 4. The members Each member of the governing board shall each is entitled to receive the sum of fifteen forty-five dollars per day, not to exceed forty-five days in any calendar year, for each day necessarily spent in the performance of their official duties. In addition, such members must each member is entitled to be permitted the reimbursement of travel and board and lodging paid for mileage and actual expenses incurred in connection with their attending meetings and in the performance of official duties, at the same rate and under the same conditions as in the amounts provided by law for state officials and officers.

SECTION 6. APPROPRIATION. Notwithstanding the provisions of section 57-39.2-26.1, there is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much thereof as may be necessary, to the department of human services to provide funds for financial incentives for, and related county costs incurred in the development of, multicounty social service districts for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 507

HOUSE BILL NO. 1292  
(Representatives Hanson, Williams, Kroeber)  
(Senator Marks)

### STATE HOSPITAL LAND TRANSFER

AN ACT to authorize the director of the department of human services to transfer title and convey certain land owned by the state of North Dakota at the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State hospital land transfer authorized. The director of the department of human services may transfer title and convey the following property:

1. A tract of land located within the SW 1/4, Section 1, T139N, R64W of the Fifth Principal Meridian, known as Auditor's Lot 1-1, more particularly described as follows:

Commencing at the SW corner of said Section one; thence  $N0^{\circ}27'26''W$  along the west line of said section one, 1,204.01 feet to the point of beginning; thence continuing  $N0^{\circ}27'26''W$  along the west line of said section one, 1,057.57 feet to a point on the southwesterly right-of-way line of Interstate Highway 94, said right-of-way being 175.00 feet in width on the southwesterly side of the centerline of said Interstate Highway 94 and said centerline being in a  $2^{\circ} - 500'$  spiral curve; thence southeasterly along said right-of-way line, parallel to and 175.00 feet distant from the centerline of said Interstate Highway 94 along a spiral curve having a chord bearing of  $S70^{\circ}28'36''E$  and a chord distance of 79.79 feet to a point on said right-of-way line that is 75.00 feet easterly of the west line of said section one, measured at right angles to said west line of section one; thence  $S0^{\circ}27'26''E$ , parallel to the west line of said section one, 1,030.69 feet; thence  $S89^{\circ}50'00''W$ , 75.00 feet to the point of beginning, said Auditor's Lot 1-1 containing 1.80 acres more or less.

2. A tract of land located within the SW 1/4, Section 1, T139N, R64W of the Fifth Principal Meridian, known as Auditor's Lot 1-2, more particularly described as follows:

Commencing at the SW corner of said section one; thence  $N0^{\circ}27'26''W$  along the west line of said section one, 1,204.01 feet; thence  $N89^{\circ}50'00''E$ , 75.00 feet to the point of beginning; thence  $N0^{\circ}27'26''W$ , parallel to the west line of said section one, 1,030.69 feet to a point on the southwesterly right-of-way line of Interstate Highway 94, said right-of-way being 175.00 feet in width on the southwesterly side of the centerline of said Interstate Highway 94 and said centerline being in a  $2^{\circ}-500'$  spiral curve;

thence southeasterly along said right-of-way line, parallel to and 175.00 feet distant from the centerline of said Interstate Highway 94, along a spiral curve having a chord bearing of  $S71^{\circ}36'05''E$  and a chord distance of 87.10 feet to a point on said right-of-way line; thence  $S1^{\circ}42'11''W$ , 1,003.47 feet; thence  $S89^{\circ}50'00''W$ , 44.60 feet to the point of beginning, said Auditor's Lot 1-2 containing 1.49 acres more or less.

The transfer of title and conveyance of this property must be at no cost to the department of human services. An independent appraisal must be obtained for the property described in subsections 1 and 2 and the sales price for the property must be not less than the appraised value or three hundred dollars per acre, whichever is greater. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of human services in the transaction authorized by this Act. All legal documents, papers, and instruments required by the transaction authorized by this Act must be reviewed and approved as to form and legality by the attorney general.

Approved April 8, 1991

Filed April 8, 1991

## CHAPTER 508

SENATE BILL NO. 2237

(Committee on Human Services and Veterans Affairs)

(At the request of the Office of Management and Budget)

### HUMAN SERVICES' COMMITTEES

AN ACT to create and enact a new section to chapter 50-27 of the North Dakota Century Code, relating to the administration of the children's trust fund by the committee on children and youth; to amend and reenact sections 25-01-01.1, 50-06-01.2, 50-06-01.4, subdivision d of subsection 1 of section 50-25.2-05, sections 50-26-01, 50-26-05, 50-27-01, and 50-27-03 of the North Dakota Century Code, relating to the various committees of the governor's council on human resources, the developmental disabilities council, the protection and advocacy project, and the children's trust fund; and to repeal section 18 of chapter 333 of the 1989 Session Laws of North Dakota, relating to the duties of the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 25-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01.1. State council on developmental disabilities. There must be maintained in the ~~office of the governor~~ department of human services a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. North Dakota department of human services.
3. State department of health and consolidated laboratories.
4. Developmental center at Grafton.
5. Job service North Dakota.
6. ~~Director of institutions.~~

The council shall ~~have consumer,~~ at a minimum, include representation in conformity with that conforms to federal regulations law requirements regarding state councils on developmental disabilities. All members of the council must be appointed by the governor ~~from the list of designees provided by agency heads pursuant to this section.~~ The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings must be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council constitutes a quorum and

\* NOTE: Section 25-01-01.1 was also amended by section 7 of Senate Bill No. 2245, chapter 592.

may act upon any matter coming before the council. Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, and review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities; ~~provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution, or organization; and establish a committee on professional standards and certification which will develop rules for the certification of developmental disability professionals.~~ The council may take any action reasonably necessary to secure and administer any money made available to state councils on developmental disabilities through the Developmentally Disabled and Bill of Rights Act [Pub. L. 95-602; 92 Stat. 2955; 42 U.S.C. 6000 et seq.]. The council, ~~with the approval of~~ if approved by the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of developmentally disabled persons in North Dakota, and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

SECTION 2. AMENDMENT. Section 50-06-01.2 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.2. Department of human services - Creation. The North Dakota department of human services is hereby created to assume the functions, powers, and duties of the following governmental agencies:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, 50-10, 50-11, 50-11.1, 50-12, 50-18, 50-19, 50-20, 50-21, 50-24.1, and 50-25.1.
2. ~~The governor's council on human resources as established by chapter 50-26.~~
- 3- The mental health and retardation division of the state department of health and consolidated laboratories as established by chapter 25-10, including the state hospital and any other institutions under the jurisdiction of the mental health and retardation division.
- 4- 3. The division of alcoholism and drug abuse of the state department of health and consolidated laboratories as established by chapter 54-38.
- 5- 4. The state council on developmental disabilities as established by section 25-01-01.1.

\* SECTION 3. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department. The department includes the state hospital; ~~the committees on aging, children and youth, employment of~~

\* NOTE: Section 50-06-01.4 was also amended by section 25 of Senate Bill No. 2245, chapter 592.

persons with disabilities, and related committees established by the governor, of the governor's council on human resources; the commission on the status of women; the regional human service centers; a vocational rehabilitation unit; and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001, et seq.], home and community-based services, licensure of adult family care homes, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.
5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including aid to families with dependent children, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening,



diagnosis and treatment, the licensure of basic care facilities, utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health and consolidated laboratories; with the director of institutions and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 50-25.2-05 of the North Dakota Century Code is amended and reenacted as follows:

- d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the agency of the protection and advocacy project under the supervision of the executive committee of the governor's council on human resources, or private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult.

\* SECTION 5. AMENDMENT. Section 50-26-01 of the North Dakota Century Code is amended and reenacted as follows:

50-26-01. Establishment of governor's council on human resources - Certain committees to constitute - Appointment. There is hereby established a governor's council on human resources to be maintained within the office of the governor. The council must consist of a committee on aging, a committee on children and youth, a committee on employment of persons with disabilities, a commission on the status of women, and other committees having a related interest in human resources as may be appointed. The commission on the status of women and the committees on aging, children and youth, employment of persons with disabilities, and other committees having a related interest in human resources appointed by the governor must be maintained in the department of human services. Each committee member must be appointed by the governor for a term of three years, staggered so that the terms of one-third of the members of each committee expire July first of each year, except that initial appointments to the committees must be made on the basis of a one-year term for one-third of the members of each committee; a two-year term for one-third of the members of each committee; and a full three-year term for the remaining members of each committee. At least one-third of the members appointed to the committee on children and youth must have expertise in the prevention of child abuse and neglect. Each of the committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or the chairman's designated representative. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for the remainder of the unexpired term only.

SECTION 6. AMENDMENT. Section 50-26-05 of the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Section 50-26-01 was also amended by section 24 of Senate Bill No. 2068, chapter 54.

50-26-05. Expenses of council - Payment - Offices. All expenses of any member of any committee of the governor's council on human resources or any employee thereof and any other expenses of the council must be paid upon by voucher signed by the chairman of the council's executive committee or other member of the executive committee if the chairman is unable to act. Upon approval of such vouchers by the office of the budget, warrant-checks must be prepared by the office of management and budget. Suitable office space must be made available to the governor's council on human resources in the state capitol building. Expenses of the members of the commission on the status of women and of the members of the committees on aging, children and youth, employment of persons with disabilities, and other related committees established by the governor must be paid from the appropriation for the department of human services, and expenses of the members of the executive committee, when meeting as the executive committee, must be paid from the appropriation for the governor's office.

SECTION 7. AMENDMENT. Section 50-27-01 of the North Dakota Century Code is amended and reenacted as follows:

50-27-01. Creation and administration of children's trust fund. There is hereby created in the state treasury a special fund known as the children's trust fund. The ~~executive~~ committee on children and youth of the governor's council on human resources shall administer the fund. The chairperson of the committee, or such other person as the committee may designate, and the state treasurer shall deposit in the children's trust fund at such times as they may become available, all moneys designated for the fund from whatever source derived. The state treasurer shall invest such funds in interest-bearing accounts as is designated by the committee, and the interest earned must be deposited in the children's trust fund. The department of human services shall provide administrative and clerical support for the children's trust fund.

SECTION 8. AMENDMENT. Section 50-27-03 of the North Dakota Century Code is amended and reenacted as follows:

50-27-03. Authority of the committee on children and youth. In addition to the powers and duties enumerated in section 50-26-02, the committee on children and youth of the governor's council on human resources may:

1. Apply for and receive public funds from any source, devises, legacies, bequests, gifts, and donations from private individuals, organizations, or funds from any other source not contrary to law.
2. ~~Meet at least twice each year for the purpose of administering the children's trust fund.~~
- 3- Create such advisory committees as may be deemed necessary to assure public involvement in the planning, development, and administration of the children's trust fund.
- 4- 3. Hire or arrange for appropriate staff, as deemed necessary, to administer and maintain properly the children's trust fund.
- 5- 4. Develop, implement, and periodically review a written plan to be used in administering the funds expended from and retained in the children's trust fund. The written plan must include the types of

activities to be funded, the nature of organizations preferred for funding, the criteria for eligible fund applicants, and the mechanisms for the monitoring and evaluating of funded activities.

- ~~6-~~ 5. Award grants from the children's trust fund in accordance with this chapter and any rules that have been adopted.
- ~~7-~~ 6. Adopt, after public notice and an opportunity for comment has been given, any rules it determines to be necessary to carry out this chapter.
- ~~8-~~ 7. Contract with persons or organizations, including political subdivisions and school districts.
- ~~9-~~ 8. Prepare and submit to the executive director of the department of human services a report at the end of each biennium.

~~The governor~~ The director of the department of human services shall designate a person with a demonstrated expertise in the prevention of child abuse and neglect as executive secretary to the children and youth committee to assist in the administration of the children's trust fund.

SECTION 9. A new section to chapter 50-27 of the North Dakota Century Code is created and enacted as follows:

Governor's council on human resources. The executive committee of the governor's council on human resources and its functions must be maintained in the governor's office.

SECTION 10. REPEAL. Section 18 of chapter 333 of the 1989 Session Laws of North Dakota is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 509

SENATE BILL NO. 2384  
(Senators Mathern, Mushik, Traynor)  
(Representatives Scherber, Trautman, Nowatzki)

### FAMILY SUPPORT PROGRAMS

AN ACT to adopt a statement of legislative policy relating to the family; to provide for family life education; to create and enact two new sections to title 50, a new subsection to section 50-06-05.1, a new section to chapter 50-09, and a new section to chapter 50-11.1 of the North Dakota Century Code, relating to the coordination of services for pregnant women, benefits for pregnant women, aid to dependent children and medical assistance for adopted children with special needs, and early childhood services resource and referral programs; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of legislative policy. The state must advocate for the family by using political, economic, social, and judicial measures that support the unity and stability of the family so that the family can exercise its specific function of nurturing and protecting its members. If the family is to be nurtured and its members protected, the state must support programs that offer assistance for pregnant women and their families. Unjust social and economic structures such as poverty, sexism, and lack of adequate health care and information should be addressed. Women must have the ability to make responsible decisions concerning a pregnancy without losing other opportunities for a fulfilled life. Ensuring the dignity and rights of women and children and families is the operative principle underlying this Act.

SECTION 2. Family life education program. The department of human services shall enter into an agreement with the North Dakota state university extension service for the design of a program to educate and support individuals at all points within the family life cycle. The program must provide support for families and youth with research-based information relating to personal, family, and community concerns and must contain a research component aimed at evaluation of planned methods or programs for prevention of family and social problems. The program must address the following interrelated topics:

1. Child and youth development.
2. Parent education with an emphasis on parents as educators.
3. Human development.
4. Interpersonal relationships.
5. Family interaction and family systems.

6. Family economics.
7. Intergenerational issues.
8. Impact of societal changes on the family.
9. Coping skills.
10. Community networks and supports for families.

SECTION 3. A new subsection to section 50-06-05.1 of the North Dakota Century Code is created and enacted as follows:

To coordinate services for pregnant women.

SECTION 4. A new section to title 50 of the North Dakota Century Code is created and enacted as follows:

Coordination of services for pregnant women. The department shall:

1. Collect information concerning all existing private and public organizations in this state offering services to pregnant women who are experiencing problems in connection with their pregnancies due to medical, economic, social, or psychological factors. The information must be geographically indexed and designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is a dependent, including adoption agencies. This information must include the nature of the services offered, the conditions under which and the locations at which services are available, the service area covered, and the legal status and organizational structure of the organization.
2. Disseminate information collected under this subsection to all existing organizations offering services to pregnant women and to potential organizations desiring to offer such services. This information must be disseminated in such a manner that existing and potential organizations are assisted in their efforts to serve pregnant women.
3. Serve as a clearinghouse for information and advice on creating, administering, and maintaining an effective organization offering services to pregnant women.
4. Establish and widely advertise a statewide toll-free telephone number that persons may call to obtain information concerning organizations near them offering services to pregnant women, and in other ways disseminate information concerning organizations offering services to pregnant women.

SECTION 5. A new section to title 50 of the North Dakota Century Code is created and enacted as follows:

Benefits for pregnant women. The department shall pay a benefit during the first six months of pregnancy to the mother of an unborn child who would otherwise be eligible for a benefit under chapter 50-09. The benefit paid under this section must be equal to the benefit available under chapter

50-09. An applicant for a benefit under this section shall provide medical verification of her pregnancy. If the applicant is unable to provide the verification, a medical examination to provide such verification must be provided by the department.

SECTION 6. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Assistance for adopted children with special needs. Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or vocational school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social services board and who is five years of age or older; under eighteen years of age with a physical, emotional, or mental handicap; a member of a minority; or a member of a sibling group.

SECTION 7. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Resource and referral program - Authority of department to make grants - Federal funds - Program components.

1. The department may make grants to public and private nonprofit entities for the planning, establishment, expansion, improvement, or operation of early childhood services. Public or private entities may apply to the department for funding. Applicants shall apply for such grants on forms provided by the department. Applications for grants using funds received by the state under subsection 2 must include assurances that federal requirements have been met.
2. The department shall submit an application annually to the United States secretary of health and human services for the purpose of obtaining the state's allotment of funds authorized under chapter 8 of title VI of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9871-9877] or under any subsequent federal law providing funding for child care and development programs.
3. Each program must identify all existing early childhood services through information provided by all relevant public and private

entities in the areas of service and must develop a resource file of the services which must be maintained and updated at least quarterly. The services must include early childhood services and service providers as defined in section 50-11.1-02.

4. Each program providing early childhood resource and referral services must establish a referral process that responds to parental needs for information, fully ensures the confidentiality of records and information as required under subsection 3 of section 50-11.1-07, affords parents maximum access to all referral information, and includes telephone referral available for no less than twenty hours per week. Each program shall publicize its services through popular media sources, agencies, employers, and other appropriate methods.
5. All early childhood services resource and referral programs must maintain documentation of the number of calls and contacts to the program. A program may collect and maintain the following information:
  - a. Ages of children served.
  - b. Time category of child care request for each child.
  - c. Special time category, such as nights, weekends, or swing shift.
  - d. The reason that the child care is needed.
6. Each program must have available, as an educational aid to parents, information on available parent, early childhood, and family education programs in the community and information on aspects of evaluating the quality and suitability of early childhood services, including licensing regulation, financial assistance availability, child abuse reporting procedures, and appropriate child development information.
7. A program may provide technical assistance to existing and potential providers of all types of early childhood services and to employers. This assistance must include:
  - a. Information on all aspects of initiating new early childhood services including licensing, zoning, program and budget development, and assistance in finding information from other sources.
  - b. Information and resources which help existing early childhood service providers to maximize their ability to serve the children and parents of their community.
  - c. Dissemination of information on current public issues affecting the local and statewide delivery of early childhood services.
  - d. Facilitation of communication between existing early childhood service providers and child-related services in the community served.

- e. Recruitment of licensed providers.
  - f. Options, and the benefits available to employers utilizing the various options, to expand child care services to employees.
8. Services prescribed by this section must be designed to maximize parental choice in the selection of early childhood services and to facilitate the maintenance and development of such services and resources.

SECTION 8. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,034,050, or so much thereof as may be necessary, to the department of human services for the purpose of implementing sections 2 through 7 of this Act for the biennium beginning July 1, 1991, and ending June 30, 1993. Of the total amount, \$45,000 must be distributed for the purpose of implementing section 2 of this Act, \$128,250 must be distributed for the purpose of implementing sections 3 and 4 of this Act, \$635,000 must be distributed for the purpose of implementing section 5 of this Act, and \$225,800 must be distributed for the purpose of implementing section 7 of this Act.

SECTION 9. EFFECTIVE DATE. Section 5 of this Act becomes effective July 1, 1992.

Approved April 11, 1991  
Filed April 12, 1991



**CHAPTER 510**

SENATE BILL NO. 2153  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Human Services)

**CHILD SUPPORT ENFORCEMENT PROGRAM PAYMENTS**

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to state prepayment for projected county child support expenditures; and to amend and reenact section 50-09-20.1 of the North Dakota Century Code, relating to reimbursement by the state for certain county expenditures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-20.1. Amounts state liable for - Reimbursement by state. The state agency shall reimburse each county, upon claim being made therefor by the county agency, for fifty percent of the amount expended by the county agency in excess of the amount provided by the federal government for the administration of ~~the child support enforcement program~~, the early childhood services program, the job opportunity and basic skills training program, the transportation program, and the case management program.

SECTION 2. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Amount state liable for - Prepayment by state. The state agency shall pay to or on behalf of each county, upon claim being made therefor by the county agency, fifty percent of the amount projected to be expended by the county agency in each month in excess of the amount provided by the federal government for the administration of the child support enforcement program. At the end of each quarter year, the projections must be reconciled with actual expenditures, and the monthly payment next following the reconciliation must be adjusted to account for any increase or decrease required by the reconciliation.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 511

SENATE BILL NO. 2457  
 (Senators Nalewaja, Lindgren, Evanson)  
 (Representative Kelsch)

### CHILD CARE PROVIDER INFORMATION

AN ACT to create and enact a new section to chapter 50-11.1 and a new section to chapter 50-25.1 of the North Dakota Century Code, relating to criminal history record investigations of prospective child care providers and the establishment of a carecheck registry and a child abuse information index; to amend and reenact sections 14-09-22, 50-11.1-07, subsection 1 of section 50-25.1-03, and section 50-25.1-05.2 of the North Dakota Century Code, relating to penalties for child abuse, background investigations, release of information maintained by child care providers, persons required to report suspected child abuse, and entry of child abuse reports in a child abuse information index; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

14-09-22. Neglect Abuse or neglect of child - Penalty. A

1. Except as provided in subsection 2, a parent, guardian, or other custodian of any child who shall cruelly abuse or willfully neglect or refuse to provide subsistence, education, or other necessary care for the health, morals, or well-being of such child, or who shall willfully permit and allow any such child to be in a disreputable place or associate with vagrants, vicious or immoral persons, or engage in an occupation forbidden by the laws of North Dakota, or to engage in an occupation injurious to his health or morals or to the health or morals of others, or any such parent, guardian, or custodian who, in the supervision and control of such child, shall fail to exercise reasonable diligence in preventing such child from being in a disreputable place or from associating with vagrants, vicious or immoral persons, or from engaging in an occupation forbidden by the laws of North Dakota, or from engaging in any occupation injurious to his health or morals or to the health and morals of others shall be commits any of the following offenses is guilty of a class C felony:

- a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury.
- b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control

- necessary for the child's physical, mental, or emotional health, or morals.
- c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
- d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.

SECTION 2. AMENDMENT. Section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07. Investigation of applicants, licensees, and registrants - Maintenance of records - Confidentiality of records.

1. The department and the county agency at any time may investigate and inspect the conditions of the facility, the qualifications of the providers of early childhood services in any early childhood facility, and the qualifications of any in-home provider seeking or holding a license or registration document under this chapter. Upon request of the department or the county agency, the state department of health and consolidated laboratories or the state fire marshal, or ~~his~~ the fire marshal's designee, shall inspect any facility for which a license is applied for or issued and shall report ~~its~~ the findings to the county agency.
2. Licensees and registrants shall:
  - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department; and
  - b. Admit for inspection authorized agents of the department or the county agency and open for examination all records, books, and reports of the home or facility.
3. ~~All~~ Except as provided in subsection 4, all records and information maintained with respect to children receiving early childhood services are confidential and must be properly safeguarded and may not be disclosed except:

- a. In a judicial proceeding;
- b. To officers of the law or other legally constituted boards or agencies; or
- c. To persons having a definite interest in the well-being of the child or children concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.

4. A provider of early childhood services, upon the request of the parent or guardian of a child for whom the provider provides such services, shall make available to the parent or guardian a list of the names, telephone numbers, and addresses of the parents or guardians of children for whom early childhood services are provided. The list may only include the names, telephone numbers, or addresses of parents or guardians who grant the provider permission to disclose that information.

SECTION 3. A new section to chapter 50-11.1 of the North Dakota Century Code is created and enacted as follows:

Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of probable cause for child abuse or neglect, the division shall submit one set of the fingerprints to the federal bureau of investigation and one set to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of probable cause for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after the effective date of this Act, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 4. AMENDMENT. Subsection 1 of section 50-25.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer, or member of the clergy having knowledge of or reasonable cause to suspect that a child is abused or neglected shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity. A member of the clergy, however, is not required to report such circumstances if the knowledge or suspicion is derived from information received in the capacity of spiritual adviser.

SECTION 5. AMENDMENT. Section 50-25.1-05.2 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-05.2. Report to the court - Entry of report in the child abuse information index.

1. The state child protection team, upon a determination that institutional child abuse or neglect is indicated, shall promptly make a written report of a determination of probable cause for child abuse or neglect to the juvenile court having jurisdiction in the matter. When the subject of the report is a state-operated institution, the state child protection team shall promptly notify the governor that a report has been made to the juvenile court.
2. In all other cases, upon a determination that probable cause exists to believe that child abuse or neglect is indicated, the department or the department's designee shall promptly make a written report of a determination of probable cause for child abuse or neglect to the juvenile court having jurisdiction in the matter.
3. The state child protection team or the department or the department's designee, as applicable, shall promptly file a report of a determination of probable cause for child abuse or neglect made under this section in the child abuse information index.

SECTION 6. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Child abuse information index - Establishment. The division of children and family services or other division as determined appropriate by the department shall maintain a child abuse information index of all reports of determinations of probable cause for child abuse or neglect filed pursuant to section 50-25.1-05.2.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 1992.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 512

HOUSE BILL NO. 1591  
(Representatives Kerzman, Scherber)  
(Senator Krauter)

### **FUEL ASSISTANCE ELIGIBILITY**

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to exemption of pre-need funeral plan from eligibility determination.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.3. When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance or fuel assistance, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made under a pre-need funeral service contract by an applicant for or recipient of medical assistance or fuel assistance. A pre-need funeral service contract deposit is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance or fuel assistance recipient except to the extent that prepayments or deposits on pre-need funeral service contracts total less than one thousand four hundred dollars.

Approved April 3, 1991  
Filed April 4, 1991

**CHAPTER 513**

SENATE BILL NO. 2485  
(Senators Stenehjem, Mathern, Nalewaja)  
(Representative Larson)

**MEDICAL ASSISTANCE FOR PSYCHOLOGIST SERVICES**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance coverage for services provided by psychologists; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance - Services provided by psychologists. Within the limits of legislative appropriations, the department of human services shall provide medical assistance to eligible recipients for services provided by psychologists licensed under chapter 43-32.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1992.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 514

HOUSE BILL NO. 1277  
(Representatives D. Olsen, Cleary, Trautman)  
(Senators Nalewaja, Robinson, Mushik)

### SKILLED NURSING ALTERNATIVES

AN ACT to repeal sections 50-24.3-04 and 50-24.3-05 of the North Dakota Century Code, relating to preadmission assessment of persons prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility; to provide a statement of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 50-24.3-04 and 50-24.3-05 of the North Dakota Century Code are repealed.

SECTION 2. LEGISLATIVE INTENT - IN-HOME AND COMMUNITY-BASED SERVICES. It is the intent of the legislative assembly that the department of human services, through senior agencies and senior centers, provide information to the elderly on available in-home and community-based services.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 1991  
Filed March 28, 1991



## CHAPTER 515

HOUSE BILL NO. 1136  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### HEALTH DEPARTMENT TO CLASSIFY NURSING HOME PAYMENTS

AN ACT to amend and reenact subsections 1 and 2 of section 50-24.4-01.1 of the North Dakota Century Code, relating to replacing the state department of health and consolidated laboratories with the department of human services with regard to nursing home resident payment classifications and procedures for reconsideration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 50-24.4-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section:-

- a. ~~"Department"~~ means the department of health and consolidated laboratories.
- b. ~~"Resident's"~~ "resident's representative" includes the resident's guardian or conservator, a person authorized or required to pay the nursing home expenses of the resident, or any other person designated by the resident in writing.

2. The department of human services shall establish resident payment classifications for the care of residents of nursing homes.

Approved March 7, 1991  
Filed March 7, 1991

## CHAPTER 516

HOUSE BILL NO. 1595  
(Representative Rydell)  
(Senators Graba, Holmberg)

### NURSING HOME PRIVATE ROOM RATES

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to payments for private rooms in nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Rates for private rooms - Payments by a third party on behalf of medical assistance recipients.

1. Notwithstanding section 50-24.4-19, a nursing home may receive a payment, in addition to payment of the rate set under this chapter, for the use of a private room by a resident who receives medical assistance benefits if:
  - a. The private room is not medically necessary;
  - b. The resident, or another person acting on behalf of the resident, has requested the private room and the nursing home informs the person making the request, at the time of the request, of the amount of the payment; and
  - c. The payment does not exceed the amount that the nursing home charges private paying residents for a private room under subsection 1 of section 50-24.4-19.
2. For purposes of this chapter, a private room is a covered service only if medically necessary for the care of a resident.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 517

HOUSE BILL NO. 1031  
(Legislative Council)  
(Interim Budget Committee on Long-Term Care)

### **NURSING HOME PROPERTY COST REIMBURSEMENT**

AN ACT relating to a property cost reimbursement study and property cost reimbursement to certain nursing homes; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Property reimbursement study - Reimbursement in certain cases.

1. The department of human services shall study the medical assistance property cost reimbursement system for the nursing home industry in the state of North Dakota. The department shall establish a nine-member advisory committee for the study consisting of departmental staff, at least three representatives of the long-term care industry, and three legislative members appointed by the chairman of the legislative council. The department may expend funds to engage a qualified consulting firm to assist in the study and shall from time to time report on the progress of the study and any findings to the legislative council or a committee designated by the council. The legislative council shall report any findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-third legislative assembly.
2. The department shall reimburse nursing home providers that are vendors in the medical assistance program for the use of real estate and depreciable equipment that was purchased by the nursing home provider after July 1, 1985, and before January 1, 1991, based on property costs created by good faith, arm's length purchase agreements. For purposes of this Act, "property costs" means property taxes including special assessments, lease and rental costs of personal property and reasonable legal expense, all to the extent allowable under chapter 50-24.4 and rules adopted by the department; interest expense allowable under rules adopted by the department without the application of subdivision f of subsection 1 of section 75-02-06-04 of the North Dakota Administrative Code; personal property depreciation based upon purchase price paid by the buyer; and real property depreciation based upon current reproduction cost of those assets depreciated on a straight-line basis over their useful lives to the date of acquisition by the buyer and increased by one-half of the percentage increase in the consumer price index for all urban consumers (United States city average) from the date of acquisition by the seller to the date of

acquisition by the buyer, or the purchase price paid by the buyer, whichever is lower.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$75,000, or so much thereof as may be necessary, and \$75,000 from special funds, to the department of human services for the purpose of undertaking the study provided for in section 1 of this Act, for the period beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. Property cost reimbursement. The department of human services shall provide the additional property cost reimbursement required by this Act from funds appropriated to the department in Senate Bill No. 2002 of the fifty-second legislative assembly. It is the intent of the legislative assembly that the \$783,345, of which \$184,086 is from the general fund, necessary to fund the additional reimbursement required by this Act, will be available through the department's recapture of depreciation related to the sales between the Benedictine health systems and Beverly enterprises.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 518

SENATE BILL NO. 2437  
(Senators Keller, Solberg, Tomac)  
(Representative Wald)

### REIMBURSEMENT FOR NEW OR EXPANDED NURSING HOMES

AN ACT to amend and reenact section 50-24.4-16 of the North Dakota Century Code, relating to special cost payment rates for nursing homes with a capacity increase and for newly constructed nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-16 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-16. Special rates.

1. For nursing homes with a significant capacity increase and for newly constructed nursing homes, which first provide services on or after July 1, 1988, and which are not included in the calculation of the percentile for any group, the department shall establish by rule procedures for determining interim operating cost payment rates. The interim payment rate may not be in effect for more than fifteen ~~eighteen~~ months. The department shall establish procedures for determining the interim rate and for making a retroactive cost settle-up after the first year of operating; ~~the cost settled operating cost per diem may not exceed one hundred ten percent of the sixtieth percentile established for the appropriate group for~~ periods when an interim rate was in effect.
2. As soon as is practicable following the establishment of the procedures required by subsection 1, the department shall apply the special rates for all affected facilities for rate periods beginning on or after January 1, 1990.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 519

SENATE BILL NO. 2494  
(Heigaard)

### NURSING HOME PATIENT BENEFITS FILING

AN ACT to amend and reenact section 50-24.4-27 of the North Dakota Century Code, relating to medicare certification and charges by nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-27 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-27. Medicare certification. All nursing ~~homes~~ facilities certified ~~as skilled nursing facilities~~ under the medical assistance program shall participate in medicare part A and part B with respect to ~~every skilled bed~~ at least thirty percent of the beds in the facility unless, after submitting an application, medicare certification is denied by the federal health care financing administration. The facility shall file on behalf of each patient or assist each patient in the filing of requests for any third-party benefits to which the patient may be entitled. Medicare review must be conducted at the time of the annual medical assistance review. Charges for medicare-covered services provided to residents who are simultaneously eligible for medical assistance and medicare must be billed to medicare part A or part B before billing medical assistance. Medical assistance may be billed only for charges not reimbursed by medicare.

Approved April 5, 1991  
Filed April 8, 1991

# SALES AND EXCHANGES

## CHAPTER 520

SENATE BILL NO. 2356  
(Senators Marks, Bowman)  
(Representative Erickson)

### AUCTION CONTRACTS

AN ACT to amend and reenact section 51-05.1-04.1 of the North Dakota Century Code, relating to written contracts for the sale of property by auctioneers and auction clerks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts. ~~No~~ An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The contract must identify the property, commission rate, any restrictions on sale, whether the auctioneer is authorized to purchase ~~for the auctioneer~~ at the sale, and payment of sale expenses and proceeds. The auctioneer shall retain a copy of each contract for two years after the auction. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. This section does not apply to livestock markets.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 521

SENATE BILL NO. 2553  
(Krebsbach, Bowman)

### FARM EQUIPMENT FRANCHISE PRACTICES

AN ACT to create and enact a new section to chapter 51-07 of the North Dakota Century Code, relating to prohibited practices for manufacturers, wholesalers, or distributors of farm implements, machinery, or repair parts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:

Prohibited practices under farm equipment dealership contracts. A manufacturer, wholesaler, or distributor of farm implements, machinery, or repair parts who enters into a contract with any person engaged in the business of selling and retailing farm implements and repair parts for farm implements may not:

1. Coerce or attempt to coerce the farm equipment dealer to accept delivery of farm equipment, parts, or accessories that the farm equipment dealer has not voluntarily ordered.
2. Condition or attempt to condition the sale of farm equipment on a requirement that the farm equipment dealer also purchase other goods or services, except that a farm equipment manufacturer may require the dealer to purchase all parts reasonably necessary to maintain the quality of operation in the field of any farm equipment used in the trade area and telecommunication necessary to communicate with the farm equipment manufacturer.
3. Coerce or attempt to coerce a farm equipment dealer into a refusal to purchase farm equipment manufactured by another farm equipment manufacturer.
4. Discriminate in the prices charged for farm equipment of like grade and quality sold by the farm equipment manufacturer to similarly situated farm equipment dealers. This subsection does not prevent the use of differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery or for the differing methods or quantities in which the farm equipment is sold or delivered by the farm equipment manufacturer. This section does not diminish the manufacturer's, wholesaler's, or distributor's ability to provide volume discounts, bonuses, or special machine ordering programs commonly used in the industry.
5. Attempt or threaten to terminate, cancel, fail to renew, or substantially change the competitive circumstances of the



dealership contract for any reason other than failure of the farm equipment dealer to comply with the terms of the written contract between the parties or if the attempt or threat is based on the results of a circumstance beyond the farm equipment dealers' control, including a sustained drought or other natural disaster in the dealership market area or a labor dispute.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 522

SENATE BILL NO. 2585

(David, Langley)

(Approved by the Committee on Delayed Bills)

### RESALE OF RETURNED VEHICLES

AN ACT to amend and reenact section 51-07-22 of the North Dakota Century Code, relating to the resale of returned passenger motor vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-22 of the North Dakota Century Code is amended and reenacted as follows:

51-07-22. Resale of returned passenger motor vehicles - Penalty.

1. A person may not sell in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22, unless the manufacturer provides:
  - a. The same express warranty it provided to the original purchaser, except the term of the warranty must be for at least twelve thousand miles or twelve months after the date of resale, whichever is earlier; and
  - b. The purchaser a statement on a separate document that must be signed by the manufacturer and the purchaser and must be in ten point, capitalized type, in substantially the following form: "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE DEFECTS COVERED BY THE MANUFACTURER'S EXPRESSED WARRANTY WERE NOT REPAIRED WITHIN A REASONABLE TIME AS PROVIDED BY NORTH DAKOTA LAW".
2. A person may not ship or deliver for resale in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer.
3. Violation of this section is a class B misdemeanor.

Approved April 5, 1991

Filed April 8, 1991

## CHAPTER 523

SENATE BILL NO. 2262  
(Vosper)

### **UNSOLICITED TELEFACSIMILE ADVERTISING**

AN ACT relating to regulation of unsolicited telefacsimile advertising.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Unsolicited telefacsimile advertising. It is unlawful for any person to initiate the unsolicited transmission of a telefacsimile message promoting a good or service for purchase by the recipient of the message. The term "telefacsimile" as used in this section means any process in which an electronic signal is transmitted by telephone line for conversion into written text. This section does not apply to a telefacsimile message sent to a recipient with whom the initiator has had a prior contractual or business relationship, nor does it apply to transmissions not exceeding two pages which are transmitted between the hours of nine p.m. and six a.m. Notwithstanding the above, it is unlawful to initiate a telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive any telefacsimile from the initiator. A person who transmits an unsolicited telefacsimile message in violation of this section is liable to the recipient of that message for fifty dollars per month for each month in which the recipient receives the unsolicited message.

Approved April 5, 1991  
Filed April 8, 1991

**CHAPTER 524**

HOUSE BILL NO. 1178  
(Committee on Judiciary)  
(At the request of the Attorney General)

**ANTITRUST INJURY TO INDIRECT PURCHASER**

AN ACT to create and enact two new subsections to section 51-08.1-08 of the North Dakota Century Code, relating to recovery of damages for antitrust injury by an indirect purchaser.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 51-08.1-08 of the North Dakota Century Code are created and enacted as follows:

In any action for damages under this section, the fact that the state, political subdivision, public agency, or person threatened with injury or injured in its business or property by any violation of the provisions of this chapter, has not dealt directly with the defendant does not bar recovery.

In any action for damages under this section, any defendant, as a partial or complete defense against a claim for damages, is entitled to prove that the plaintiff purchaser, or seller in the chain of manufacture, production, or distribution, who paid any overcharge or received any underpayment passed on all or any part of the overcharge or underpayment to another purchaser or seller in that action.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 525

SENATE BILL NO. 2182  
(Committee on Industry, Business and Labor)  
(At the request of the Attorney General)

### BELOW COST SELLING

AN ACT to create and enact three new sections to chapter 51-10 of the North Dakota Century Code, relating to replacing the functions of the North Dakota trade commission with authority of the attorney general regarding below cost selling; to amend and reenact section 51-10-06 and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to elimination of the North Dakota trade commission; and to repeal sections 51-10-09, 51-10-10, 51-10-11, 51-10-12, 51-10-13, 51-10-14, and 51-10-15 of the North Dakota Century Code, relating to the North Dakota trade commission and regulation of below cost selling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Three new sections to chapter 51-10 of the North Dakota Century Code are created and enacted as follows:

Powers of attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice the attorney general may:

1. Require that person to file on forms prescribed by the attorney general, a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise at less than cost as defined in this chapter and any other data and information the attorney general may deem necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise at less than cost as defined in this chapter.
3. Examine any merchandise or sample of merchandise, record, book, document, account, or paper as the attorney general may deem necessary.
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to such practice and retain it until completion of all relevant proceedings under this chapter.

Subpoena - Hearing - Rules. The attorney general may issue subpoenas to any person, administer an oath or affirmation to any person, conduct

hearings in the aid of any investigation of inquiry, prescribe forms, and adopt necessary rules.

Failure to display information or obey subpoena. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may file in the district court a petition for an order directing the person to file the required statement or report or to obey the subpoena. The order may be granted by the district court after notice and hearing.

SECTION 2. AMENDMENT. Section 51-10-06 of the North Dakota Century Code is amended and reenacted as follows:

51-10-06. Injunctinal relief may be had in addition to other penalties - Duty to commence actions. In addition to the penalties provided in this chapter, the courts of this state are invested with the jurisdiction to prevent and restrain violations of this chapter by injunctinal proceedings. The attorney general and the several state's attorneys shall institute suits in behalf of this state, to prevent and restrain violations of the provisions of this chapter. Any person damaged, or who is threatened with loss or injury, by reason of a violation of the provisions of this chapter, is entitled to sue for and have injunctive relief in the district court against any damage or threatened loss or injury by reason of a violation hereof.

- 1- ~~The North Dakota trade commission shall have the administration of this chapter; and the members thereof may not receive any additional compensation for their services other than ten dollars per day and their necessary expenses in attending meetings. Said commission is empowered and directed to prevent any person, firm, or corporation from violating any of the provisions of this chapter.~~
- 2- ~~Whenever the commission has reason to believe that any such person, firm, or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it appears to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time upon at least five days' notice to the parties and at least five days prior to applying for an order based thereon. The person, firm, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be applied for by the commission requiring such person, firm, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding must be reduced to writing and filed in the office of the commission. If upon such hearing the commission is of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state~~

its findings as to the facts and shall cause to be served on such person, firm, or corporation a copy of its findings. The commission may then apply for an order requiring such person, firm, or corporation to cease and desist from such acts or conduct. The order must be applied for in the district court of the judicial district where the act or conduct in question was done or carried on, or where such person, firm, or corporation resides or carries on business. Until a transcript of the record in such hearing has been filed in a district court, as hereinafter provided, the commission may, upon notice, modify or set aside, in whole or in part, any report made or issued by it under this section.

- 3- Any person, firm, or corporation required by an order to cease and desist from any such act or conduct may obtain a review of such order by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order be set aside. A copy of such petition must be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commission. Upon such filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite.
- 4- If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by sufficient evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon appeal as in other cases of judgments of such courts, provided, however, that said appeal must be taken within thirty days from the date of the entry of such judgment or decree.
- 5- Complaints and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; (b) by leaving a copy thereof at the residence or the principal office or place of business of such

- person; partnership; or corporation; or (c) by registering and mailing a copy thereof addressed to such person; partnership; or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint or other process setting forth the manner of said service shall be proof of the same; and the return post-office receipt for said complaint or other process registered and mailed as aforesaid shall be proof of the service of the same.
6. An order to cease and desist becomes final (a) upon the expiration of the time allowed for filing a petition for review; if no such petition has been duly filed within such time; (b) upon the expiration of the time allowed for filing a notice of appeal to the supreme court; if the order has been affirmed; or the petition for review dismissed by the district court; and no notice of appeal to the supreme court has been duly filed; or (c) upon the expiration of thirty days from the date of issuance of the remittitur of the supreme court; if such court directs that the order be affirmed or the petition for review dismissed.
  7. If the supreme court directs that the order be modified or set aside; the order rendered in accordance with the mandate of the supreme court becomes final upon the expiration of thirty days from the time it was rendered; unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate; in which event the order becomes final when so corrected.
  8. If the order is modified or set aside by the district court and if (a) the time allowed for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed; or (b) the decision of the district court has been affirmed by the supreme court; then the order becomes final on the expiration of thirty days from the time such order was rendered; unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate; in which event the order becomes final when so corrected.
  9. If the supreme court orders a rehearing; or if the case is remanded by the district court to the commission for a rehearing; and if (a) the time for filing a notice of appeal to the supreme court has expired and no such notice of appeal has been duly filed; or (b) the decision of the court has been affirmed by the supreme court; then the order rendered upon such rehearing becomes final in the same manner as though no prior order had been rendered.
  10. Any person; firm; or corporation who violates an order to cease and desist after it has become final; and while such order is in effect shall forfeit and pay to the state of North Dakota a penalty of not more than five hundred dollars for each violation; which must accrue to the state of North Dakota and may be recovered in a civil action brought by the state of North Dakota.

The remedies and method of enforcement of this chapter provided for in this section shall be deemed concurrent and in addition to the other remedies provided in this chapter.



\* SECTION 3. AMENDMENT. Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09.1-02, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, ~~51-10-13~~, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk stabilization board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The board of pardons.
  - h. The state parole board.
  - i. The state board of public school education.
  - j. The teachers' professional practices commission.
  - k. The board of trustees for the teachers' fund for retirement.
  - l. The educational telecommunications council.
  - m. The state game and fish advisory board.
  - n. The health council.
  - o. The air pollution control advisory council.
  - p. The board of animal health.
  - q. The administrative committee on veterans' affairs.
  - r. The governor's council on human resources.
  - ~~s. The North Dakota trade commission.~~
  - ~~t. s.~~ s. The North Dakota council on the arts.
  - ~~u. t.~~ t. The state historical board.
  - ~~v. u.~~ u. The Yellowstone-Missouri-Fort Union commission.
  - ~~w. v.~~ v. The state water commission.

\* NOTE: Subsection 1 of section 54-07-01.2 was also amended by section 28 of Senate Bill No. 2068, chapter 54.

~~x~~ w. The state water pollution control board.

SECTION 4. REPEAL. Sections 51-10-09, 51-10-10, 51-10-11, 51-10-12, 51-10-13, 51-10-14, and 51-10-15 of the North Dakota Century Code are repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 526

SENATE BILL NO. 2431  
(Senators Holmberg, Kelsh, Ingstad)  
(Representatives Nicholas, DeMers, Jensen)

### POPCORN TOPPING

AN ACT relating to popcorn toppings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Popcorn toppings - Advertisement - Sale. No person advertising, offering for sale, or selling popcorn intended for consumption on the premises where purchased may use the word butter, or any derivative of the word butter, to describe a topping placed on popcorn, unless the topping is real butter or unless the word butter, or derivative of the word butter, is a part of the commercial brand name of the topping product. The allowable use under this section of the word butter, or any derivative of the word butter, as part of the commercial brand name of a topping product is limited to use in that manner and popcorn with such a topping may not be described as buttered popcorn.

SECTION 2. Penalty. Any person who violates section 1 of this Act is guilty of an infraction.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 527

HOUSE BILL NO. 1315  
(Martinson)

### REVOLVING CHARGE ACCOUNT LEGAL COMPLIANCE

AN ACT to amend and reenact section 51-14-02 of the North Dakota Century Code, relating to revolving charge account requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-14-02 of the North Dakota Century Code is amended and reenacted as follows:

51-14-02. Contents of revolving charge agreements - Requirements for delivery of monthly statements - Exception. Every revolving charge agreement must be in writing and must be signed by the retail buyer. A copy of any such agreement must be delivered or mailed to the retail buyer by the retail seller prior to the date on which the first payment is due thereunder. Such agreements must state the amount and rate of the credit service charge to be charged and paid pursuant thereto. Such credit service charge must be set forth in such revolving charge agreement in terms of a monthly percentage rate to be applied to the balance outstanding from time to time thereunder, as of the beginning or end of each billing period. The retail seller under a revolving charge agreement shall promptly supply the retail buyer under such agreement with a statement as of the end of each monthly period or other regular period agreed upon by the retail seller and the retail buyer, in which there is any unpaid balance thereunder. Such statement must recite the following:

1. The unpaid balance under the revolving charge agreement at the beginning or end of the period.
2. An identification of the goods or services purchased, the cash purchase price and the date of each purchase, unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise.
3. The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period.
4. The amount of the credit service charge, if any, and also the percentage annual simple interest equivalent of such amount.
5. A legend to the effect that the retail buyer may at any time pay his total indebtedness.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the retail buyer. If a revolving charge or credit account is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with this section, comply with all requirements of the Truth in Lending Act.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 528

HOUSE BILL NO. 1411  
(Representatives Peterson, Oban, Payne)  
(Senators Dotzenrod, Thane)

### CHECK ACCEPTANCE

AN ACT relating to prohibiting conditioning acceptance of a check on being supplied a credit card number; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Acceptance of check not conditioned on disclosure of credit card number - Use of credit card for identification allowed. A person may not require, as a condition of acceptance of a check or other draft, that the person presenting the check provide a credit card number; nor may the person accepting the check or other draft record the credit card number. A person may request the person presenting the check to display a credit card as evidence of credit worthiness or as additional identification; however, only information concerning the type and issuer of the credit card may be recorded.

SECTION 2. Use of credit card where issuer guarantees cardholder checks allowed. This Act does not prohibit a person from recording a credit card number as a condition for cashing or accepting the check or other draft where that person has agreed with the card issuer to cash or accept checks or other drafts from the issuer's cardholders and the issuer guarantees cardholder checks or other drafts cashed or accepted by that person.

SECTION 3. Penalty. Any person who violates any provision of this Act is guilty of an infraction.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 529

HOUSE BILL NO. 1255  
(Representatives Oban, Byerly, Clayburgh)  
(Senators DeKrey, Jerome, Kelly)

### CONSUMER PROTECTION VIOLATION AWARDS

AN ACT to amend and reenact section 51-15-09 of the North Dakota Century Code, relating to remedies for violation of consumer protection provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-15-09 of the North Dakota Century Code is amended and reenacted as follows:

51-15-09. Claims not barred. The provisions of this chapter do not bar any claim for relief by any person against any person who has acquired any moneys or property, ~~real or personal~~, by means of any practice ~~herein~~ declared to be unlawful ~~in this chapter~~. If the court finds the defendant knowingly committed the conduct, the court may order that the person commencing the action recover up to three times the actual damages proven and the court must order that the person commencing the action recover costs, disbursements, and actual reasonable attorney's fees incurred in the action.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 530

HOUSE BILL NO. 1317  
(Representatives Dalrymple, Rydell, Scherber)  
(Senators Marks, Evanson, Maxson)

### SENIOR CITIZEN CONTRACT CANCELLATION

AN ACT to amend and reenact sections 51-18-02 and 51-18-04 of the North Dakota Century Code, relating to the time period for cancellation of a home solicitation sale agreement by a person sixty-five years of age or older.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 51-18-02 of the North Dakota Century Code is amended and reenacted as follows:

51-18-02. Cancellation period - Method of cancellation - Intent.

1. In addition to any right otherwise to revoke an offer, the buyer may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer enters into an enforceable agreement subject to this chapter. A buyer sixty-five years of age or older may cancel a personal solicitation sale of a product with a purchase price greater than fifty dollars until midnight of the fifteenth business day after the day on which the buyer enters into an enforceable agreement subject to this chapter, or must be provided a written agreement that meets the requirements of section 51-18-04. In addition to other requirements of this chapter, the seller shall orally inform the buyer, at the time the transaction is entered into, of the buyer's right to cancel.
2. Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified for notice of cancellation provided by the seller by any of the following methods:
  - a. Delivering written notice to the seller.
  - b. Mailing written notice to the seller.
  - c. Sending a telegram to the seller.
3. Notice of cancellation given by the buyer is effective if it indicates the intention on the part of the buyer not to be bound by the personal solicitation sale.

SECTION 2. AMENDMENT. Section 51-18-04 of the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 51-18-02 was also amended by section 1 of House Bill No. 1367, chapter 531.

51-18-04. Agreement requirement. No agreement of the buyer in a personal solicitation sale is enforceable unless it is in writing, dated, contains the signature of the buyer, and contains a conspicuous notice in substantially the following form:

NOTICE TO BUYER

1. Do not sign this agreement if any of the spaces intended for the agreed terms to the extent of then available information are left blank.
2. You are entitled to a copy of this agreement at the time you sign it.
3. You may pay off the full unpaid balance due under this agreement at any time, and in so doing you may receive a full rebate of the unearned finance and insurance charges.
4. You may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.
5. The seller cannot enter your premises unlawfully or commit any breach of the peace to repossess goods purchased under this agreement.

The agreement must also have attached the following completed form, in duplicate:

NOTICE OF CANCELLATION

(enter date of transaction)

1. You may cancel this transaction, without any penalty or obligation, within three business days from the above date.
2. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within ten business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.
3. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.
4. If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.
5. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a



telegram, to (name of seller), at (address of seller's place of business) not later than midnight of (date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)

If the buyer is sixty-five years of age or older, and the purchase price of the product is greater than fifty dollars, the agreement required by this chapter must either state that the buyer may cancel the agreement within fifteen business days in accordance with this chapter, or state in a conspicuous manner that if the buyer is not satisfied with the product for any reason, the buyer may contact the seller within a period of not less than thirty days from the date of purchase for a full refund of the purchase price, if the product has not been intentionally damaged or misused.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 531

HOUSE BILL NO. 1367  
(Representatives Gorman, Carlisle, Gabrielson)  
(Senators Graba, Krebsbach)

### PERSONAL SOLICITATION SALE CANCELLATION

AN ACT to amend and reenact subsection 1 of section 51-18-02 and subsection 4 of section 51-18-07 of the North Dakota Century Code, relating to cancellation of personal solicitation sales.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 51-18-02 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any right otherwise to revoke an offer, the buyer may cancel a personal solicitation sale until midnight of the third business day after the day on which the buyer ~~enters into an enforceable agreement subject to~~ signs an agreement that complies with this chapter. In addition to other requirements of this chapter, the seller shall orally inform the buyer, at the time the transaction is entered into, of the buyer's right to cancel.

SECTION 2. AMENDMENT. Subsection 4 of section 51-18-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The buyer may not cancel a personal solicitation sale if ~~he~~ the buyer initiates the contract with the seller and requests the seller to provide goods or services without delay ~~because of an emergency~~ and the seller in good faith makes a substantial beginning of performance before notice of cancellation, and the goods cannot be returned to the seller in substantially as good condition as when the buyer received them.

Approved March 25, 1991  
Filed March 26, 1991

\* NOTE: Section 51-18-02 was also amended by section 1 of House Bill No. 1317, chapter 530.

## CHAPTER 532

SENATE BILL NO. 2275  
(Senators Stenehjem, Tallackson, Maxson)  
(Representatives Clayburgh, Schneider, Byerly)

## TELEPROMOTER SALES

AN ACT to create and enact sections 51-18-04.1, 51-18-04.2, and 51-18-04.3 and two new sections to chapter 51-18 of the North Dakota Century Code, relating to telepromoting transactions; to amend and reenact sections 51-15-04, 51-15-05, 51-15-06.1, 51-15-07, 51-15-08, 51-15-11, 51-18-01, and 51-18-08 of the North Dakota Century Code, relating to the authority of the attorney general, enforcement of remedies, the definition of a telepromoter, and exceptions from regulation of home solicitation sales; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-15-04 of the North Dakota Century Code is amended and reenacted as follows:

51-15-04. Powers of attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or any of the provisions of chapter 51-13 ~~or~~, 51-14, or 51-18 or when ~~he~~ the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any ~~such~~ unlawful practice under chapter 51-13, 51-14, or 51-18, ~~he~~ the attorney general may:

1. Require ~~such that~~ person to file, on ~~such~~ forms ~~as he~~ the attorney general prescribes, a statement or report in writing, under oath or otherwise, ~~as to of~~ all the facts and circumstances concerning the sale or advertisement of merchandise by ~~such that~~ person, ~~and such as well as~~ other data and information ~~as he~~ the attorney general may ~~deem~~ determine necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as ~~he~~ the attorney general may ~~deem~~ determine necessary.
4. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise material to ~~such that~~ practice and retain the same in ~~his~~ the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.

SECTION 2. AMENDMENT. Section 51-15-05 of the North Dakota Century Code is amended and reenacted as follows:

51-15-05. Subpoena - Hearing - Rules. To accomplish the objectives and to carry out the duties prescribed by this chapter ~~and the provisions of~~ or chapter 51-13 ~~or~~, 51-14, or 51-18, the attorney general, in addition to other powers conferred upon ~~him~~ the attorney general by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe ~~such~~ forms and ~~promulgate such~~ adopt rules and regulations as may be necessary, ~~which rules and regulations have the force of law.~~

SECTION 3. AMENDMENT. Section 51-15-06.1 of the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of any act or practice ~~he deems the attorney general determines~~ to be in violation of ~~any provision of~~ this chapter or ~~any of the provisions of~~ chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18 from any person ~~he~~ the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has ~~his~~ as a principal place of business or in Burleigh County. An assurance of discontinuance may not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court is punishable as criminal contempt.

SECTION 4. AMENDMENT. Section 51-15-07 of the North Dakota Century Code is amended and reenacted as follows:

51-15-07. Remedies - Injunction - Other relief - Receiver. Whenever it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, ~~he~~ or 51-18, the attorney general may seek and obtain in an action in a district court an injunction prohibiting ~~such that person from continuing such practices the unlawful practice or engaging therein in the unlawful practice or doing any acts act in furtherance thereof of the unlawful practice after appropriate notice to such that person.~~ Such notice The notice must state generally the relief sought and be served at least ten days prior to before the hearing of ~~such~~ the action. The court may make ~~such orders or judgments an order or judgment~~ as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any ~~moneys money~~, or property, ~~real or personal, which~~ that may have been acquired by means of any practice in this chapter declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, or 51-18, and that ~~such~~ the person is about to conceal ~~his~~ assets or his person or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of ~~such~~ that person. Upon a showing made by affidavit or other evidence that ~~such~~ the person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter and that ~~such~~ the person is

about to conceal ~~his~~ assets or his person or leave the state, the court shall order the appointment of a receiver to receive the assets of ~~such~~ the person.

SECTION 5. AMENDMENT. Section 51-15-08 of the North Dakota Century Code is amended and reenacted as follows:

51-15-08. Powers of receiver. When a receiver is appointed by the court pursuant to this chapter, ~~he shall have the power to the receiver may~~ sue for, collect, receive, or take into ~~his~~ possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be unlawful by this chapter or ~~the provisions of~~ chapter 51-13 ~~or~~, 51-14, or 51-18, including property with which ~~such~~ the property has been mingled if it cannot be identified in kind because of ~~such~~ the commingling, and ~~to~~ sell, convey, and assign the ~~same~~ property and hold and dispose of the proceeds ~~thereof~~ under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that ~~he that person~~ has in fact been damaged may participate with general creditors in the distribution of the assets to the extent ~~he that person~~ has sustained out-of-pocket losses. The court ~~shall have~~ has jurisdiction of all questions arising in ~~such~~ these proceedings and may make ~~such~~ orders and judgments therein as may be required.

SECTION 6. AMENDMENT. Section 51-15-11 of the North Dakota Century Code is amended and reenacted as follows:

51-15-11. Civil penalties. The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 51-12, 51-13, ~~or~~ 51-14, or 51-18.

SECTION 7. AMENDMENT. Section 51-18-01 of the North Dakota Century Code is amended and reenacted as follows:

51-18-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken.
2. "Person" includes a corporation, company, partnership, firm, association, or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state, or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership, or any association of persons.

3. "Personal solicitation sale" means a sale, lease, or rental of consumer goods or services in which the seller or his representative solicits the sale, lease, or rental, by telephone or in person, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the person soliciting the same and that agreement or offer to purchase is there given to the seller or his representative. A transaction is not a personal solicitation sale if it is made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, lease, or rental.
4. "Telepromoter" means any person who, individually, through salespersons or agents, or through the use of an automatic dialing-announcing device initiates telephone contact with a consumer or who by written notice requests that the consumer contact the person by telephone and who represents one or more of the following:
- a. That if the consumer buys one or more items from the telepromoter, the consumer will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of those items.
- b. That a consumer will receive a prize, premium, or gift if the telepromoter also encourages the consumer to do either of the following:
- (1) Purchase or rent any goods or services.
- (2) Pay any money, including a delivery or handling charge.
- c. That the consumer has in any manner been specially selected to receive the written notice or the offer contained in the written notice.

The term does not include any nonprofit or charitable organization exempt from federal taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. section 501(c)(3)].

SECTION 8. Section 51-18-04.1 of the North Dakota Century Code is created and enacted as follows:

51-18-04.1. Notice to consumer - Contract requirement for sales by telepromoter. In addition to the requirements of section 51-15-04, an agreement by a consumer to obtain a consumer good or service from a telepromoter is not enforceable unless it contains the following information:

1. The name, address, and telephone number of the telepromoter;
2. A statement of the price or fee, including any handling, shipping, delivery, or other charge being requested;
3. A detailed description of the consumer good or service; and

4. In a type size in a minimum of twelve points, in a space immediately preceding the space allotted for the consumer signature, the statement: "YOU ARE NOT OBLIGATED TO PAY ANY MONEY UNLESS YOU SIGN THIS CONTRACT AND RETURN IT TO THE SELLER."

SECTION 9. Section 51-18-04.2 of the North Dakota Century Code is created and enacted as follows:

51-18-04.2. Credit card charges. A telepromoter may not make or submit any charge to the consumer's credit card account until the telepromoter has received from the consumer an original copy of a contract that complies with this section.

SECTION 10. Section 51-18-04.3 of the North Dakota Century Code is created and enacted as follows:

51-18-04.3. Agreement by telepromoter in violation of chapter void. Any agreement for sale, lease, or rent of a consumer good or service by a telepromoter in violation of this chapter is unenforceable and void.

SECTION 11. AMENDMENT. Section 51-18-08 of the North Dakota Century Code is amended and reenacted as follows:

51-18-08. ~~Exception~~ Exceptions. The provisions of this chapter do not apply to ~~sales~~:

1. Sales of insurance; ~~not does it apply to sales~~
2. Sales of goods or services with a purchase price of less than twenty-five dollars;
3. Sales of services provided by a cable television system licensed or franchised by any city;
4. Sale of a subscription to or advertising in a newspaper of general circulation; or
5. Sales of services or advertising by a broadcaster licensed by the federal communications commission.
6. Telecommunications companies regulated by the public service commission under chapter 49 or regulated by the federal communications commission.

SECTION 12. Two new sections to chapter 51-18 of the North Dakota Century Code are created and enacted as follows:

Place of transaction. Any sale subject to this chapter is considered to have taken place in the state where the consumer resides, regardless of the location of the seller.

Waiver. Any waiver of this chapter is unenforceable and void.

Approved April 5, 1991  
Filed April 8, 1991

# SOCIAL SECURITY

## CHAPTER 533

HOUSE BILL NO. 1378  
(Representatives Oban, Dorso, Gorman)  
(Senator Schoenwald)

### INDEPENDENT CONTRACTORS

AN ACT to amend and reenact subsection 17 of section 52-01-01, subdivision e of subsection 18 of section 52-01-01, and section 65-01-03 of the North Dakota Century Code, relating to the definition of an independent contractor and exclusions from employment for unemployment compensation purposes and to the definition of an independent contractor for workers' compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

17. "Employment" means:

- a. Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date, and subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:
  - (1) Any officer of a corporation.
  - (2) Any individual who, under the provisions of subdivision e, has the status of an employee.
  - (3) Any individual other than an individual who is an employee under paragraph 1 or 2 who performs services for remuneration for any person:
    - (a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal.
    - (b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for

\* NOTE: Subsection 17 of section 52-01-01 was also amended by section 1 of House Bill No. 1580, chapter 534.



resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" includes services described in either subparagraph a or b performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

- b. An individual's entire service, performed within or both within and without this state if the service is localized in this state.
- c. Services covered by an election pursuant to chapter 52-05.
- d. Services covered by an arrangement pursuant to sections 52-02-14 and 52-02-15 between the bureau and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, must be deemed to be employment if the bureau has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.
- e. Services performed by an individual for wages or under any contract of hire must be deemed to be employment subject to the North Dakota Unemployment Compensation Law unless ~~and until~~ it is shown that: ~~(1) such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;~~ ~~(2) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of the enterprise for which such service is performed;~~ and ~~(3) such individual is customarily engaged in an independently established trade, occupation, profession, or business the individual is an independent contractor as determined by the "common law" test.~~
- f. Service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(7) of that Act and is not excluded from "employment" under subdivision h of this

subsection. Service performed after December 31, 1977, in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] by section 3306(c)(7) of that Act and is not excluded from "employment" as enumerated under subdivision h of this subsection.

- g. Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization but only if the following conditions are met:
- (1) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] solely by reason of section 3306(c)(8) of that Act; and
  - (2) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
- h. For the purposes of subdivisions f and g, the term "employment" does not apply to service performed:
- (1) In the employ of:
    - (a) A church or convention or association of churches; or
    - (b) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches.
  - (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order.
  - (3) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education and after December 31, 1977, in the employ of a governmental entity referred to in subdivision f if such service is performed by an individual in the exercise of duties:
    - (a) As an elected official.
    - (b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision.
    - (c) As a member of the state national guard or air national guard.

- (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.
  - (e) In a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week.
- (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.
  - (5) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training.
  - (6) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.
- i. The term "employment" includes the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, and after December 31, 1976, in the case of the Virgin Islands, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision b and subsection 28 or the parallel provisions of another state's law), if:
- (1) The employer's principal place of business in the United States is located in this state; or
  - (2) The employer has no place of business in the United States, but:
    - (a) The employer is an individual who is a resident of this state;
    - (b) The employer is a corporation which is organized under the laws of this state; or
    - (c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

- (3) None of the criteria of paragraphs 1 and 2 is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
  - (4) An "American employer", for purposes of this subdivision, means a person who is:
    - (a) An individual who is a resident of the United States;
    - (b) A partnership if two-thirds or more of the partners are residents of the United States;
    - (c) A trust, if all of the trustees are residents of the United States; or
    - (d) A corporation organized under the laws of the United States or of any state.
  - (5) The term "United States" for purposes of this subdivision includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- j. Notwithstanding subdivision b, all service performed after December 31, 1971, by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.
- k. Notwithstanding any other provision of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] is required to be covered under the North Dakota Unemployment Compensation Law.
- l. An individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:
- (1) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada; and
  - (2) The place from which the service is directed or controlled is in this state.
- m. Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision a of subsection 18 when:
- (1) Such service is performed for a person who:

- (a) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph 2); or
  - (b) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph 2) ten or more individuals, regardless of whether they were employed at the same moment of time.
- (2) Such service is not performed in agricultural labor if performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act [Pub. L. 82-414; 66 Stat. 166; 8 U.S.C. 1101 et seq.].
- (3) For the purposes of this subdivision, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:
- (a) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 [Pub. L. 88-582; 78 Stat. 920; 7 U.S.C. 2041 et seq.]; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and
  - (b) If such individual is not an employee of such other person within the meaning of subdivision a.
- (4) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph 3:
- (a) Such other person and not the crew leader must be treated as the employer of such individual; and
  - (b) Such other person must be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the

service in agricultural labor performed for such other person.

- (5) For the purposes of this subdivision, the term "crew leader" means an individual who:
- (a) Furnishes individuals to perform service in agricultural labor for any other person;
  - (b) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and
  - (c) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.
- n. The term "employment" includes domestic service after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority, performed for a person who paid cash remuneration of one thousand dollars or more to individuals employed in such domestic service in any calendar quarter in the current or preceding calendar year.

SECTION 2. AMENDMENT. Subdivision e of subsection 18 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- e. Service performed by an individual in the employ of ~~his~~ the individual's son, daughter, or spouse, and service performed by a child under the age of eighteen minor in the employ of his the minor's father or mother and dwelling in the household of the minor's father or mother.

SECTION 3. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. Person performing service for remuneration presumed an employee. Each person who performs services for another for a remuneration, whether the same is paid as a salary, commission, or other considerations in lieu thereof, under any agreement or contract of hire, express or implied, ~~shall be is~~ presumed to be an employee of the person for whom the services are performed, unless ~~he shall maintain~~ the person maintains a separate business establishment or ~~shall hold himself~~ holds that person out to render or ~~shall render~~ renders services to the general public.

In determining whether a person is an independent contractor or an employee, the primary test to be employed is the "right to control common law" test.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 534

HOUSE BILL NO. 1580  
(Representatives Kaldor, Dorso, B. Anderson)  
(Senators Ingstad, Satrom)

### **CORPORATE OFFICERS UNDER UNEMPLOYMENT COVERAGE**

AN ACT to amend and reenact paragraph 1 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to definitions of employment for purposes of unemployment compensation contributions and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Paragraph 1 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written application to exclude the officer's service from employment.

Approved March 13, 1991  
Filed March 13, 1991

\* NOTE: Subsection 17 of section 52-01-01 was also amended by section 1 of House Bill No. 1378, chapter 533.

**CHAPTER 535**

HOUSE BILL NO. 1072  
(Dorso, Gorman)

**UNEMPLOYMENT COMPENSATION - CADDIES**

AN ACT to create and enact a new paragraph to subdivision i of subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to the exclusion of golf caddies under the age of eighteen from the definition of employment under the unemployment compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new paragraph to subdivision i of subsection 18 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

By an individual under the age of eighteen as a golf caddy, except for service described in subdivisions f and g of subsection 17.

Approved April 8, 1991  
Filed April 8, 1991



## CHAPTER 536

SENATE BILL NO. 2164  
(Committee on Industry, Business and Labor)  
(At the request of Job Service North Dakota)

### UNEMPLOYMENT CONTRIBUTION RATE FOR NEW EMPLOYERS

AN ACT to amend and reenact subdivision c of subsection 3 of section 52-04-05 of the North Dakota Century Code, relating to determination of rates of contributions for unemployment compensation purposes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision c of subsection 3 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

c. An employer that does not qualify under either subdivision a or b is subject to a rate determined as follows:

- (1) For each calendar year new employers must be assigned a rate of ~~three and one-fourth~~ two and eight-tenths percent, unless the employer is classified in an industry that the bureau determines has a negative reserve on the computation date. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1991.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 19, 1991  
Filed February 19, 1991

\* NOTE: Subsection 3 of section 52-04-05 was also amended by section 1 of Senate Bill No. 2163, chapter 537.

## CHAPTER 537

SENATE BILL NO. 2163  
 (Committee on Industry, Business and Labor)  
 (At the request of Job Service North Dakota)

### UNEMPLOYMENT COMPENSATION CONTRIBUTION RATES FOR NEW EMPLOYERS

AN ACT to amend and reenact subsection 3 of section 52-04-05 of the North Dakota Century Code, relating to determination of rates of contributions for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 3 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be reduced below the maximum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.
- b. ~~If an employer has not been subject to the law as required under subdivision a; that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four consecutive calendar month period ending on September thirtieth of the preceding calendar year.~~
- c. An employer that does not qualify under ~~either~~ subdivision a or b is subject to a rate determined as follows:
  - (1) For each calendar year new employers must be assigned a rate of three and one-fourth percent, unless the employer is classified in ~~an industry that the bureau determines has a negative reserve on the computation date construction services~~. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
  - (2) New employers in ~~industries that have a negative reserve on the computation date and employers that have failed to provide correct industrial classification information construction services~~ must be assigned the maximum rate. However, an employer who becomes subject to the North Dakota Unemployment Compensation Law after December 31, 1989, who is classified in construction services pursuant

\* NOTE: Subsection 3 of section 52-04-05 was also amended by section 1 of Senate Bill No. 2164, chapter 536.

to subdivision C of the standard industrial classification manual must be assigned a rate of nine percent or the maximum rate, whichever is greater.

- (3) Assignment by the bureau of an employer's industrial classification for the purposes of this paragraph must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 538

SENATE BILL NO. 2236  
 (Committee on Industry, Business and Labor)  
 (At the request of Job Service North Dakota)

### ALIENS UNDER UNEMPLOYMENT COMPENSATION

AN ACT to amend and reenact subsection 14 of section 52-06-02 of the North Dakota Century Code, relating to treatment of services performed by aliens under the unemployment compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

14. Which are based on service performed by an alien, unless such alien ~~has been is an individual~~ who was lawfully admitted for permanent residence ~~or to perform~~ at the time such services were performed, ~~was lawfully present for purposes of performing such services,~~ or otherwise ~~is was~~ permanently residing in the United States under color of law at the time such services were performed (including an alien who ~~is was~~ lawfully present in the United States as a result of the application of the provisions of ~~section 203(a)(7)~~ sections 207 and 208 or section 212(d)(5) of the Immigration and Nationality Act ~~(Pub. L. 82-414, 66 Stat. 166, 8 U.S.C. 1101 et seq.)).~~
- a. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status must be uniformly required from all applicants for benefits.
  - b. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status may be made except upon a preponderance of the evidence.

Approved April 3, 1991  
 Filed April 4, 1991

## CHAPTER 539

SENATE BILL NO. 2144  
(Committee on Industry, Business and Labor)  
(At the request of Job Service North Dakota)

### UNEMPLOYMENT QUALIFICATION AND BENEFIT DURATION

AN ACT to amend and reenact subsection 2 of section 52-06-04 and section 52-06-05 of the North Dakota Century Code, relating to qualifications as an insured worker and benefit duration for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-06-04 of the North Dakota Century Code is amended and reenacted as follows:

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and ~~one-half~~ three-tenths times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and ending on the date on which the individual filed a valid claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base-period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, shall not exceed ten times the individual's weekly benefit amount:
  - a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
  - b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
  - c. This provision does not apply if, at the time of the claim, such ownership interest has been ceded.

SECTION 2. AMENDMENT. Section 52-06-05 of the North Dakota Century Code is amended and reenacted as follows:

52-06-05. Maximum potential benefits. Any otherwise eligible individual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line which includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
<del>1.50 to 2.29</del>	<del>12</del>
<del>2.30 to 2.44</del>	<del>14</del>
<del>2.45 to 2.59</del>	<del>16</del>
<del>2.60 to 2.74</del>	<del>18</del>
1.30 to 1.49	12
1.50 to 2.29	14
2.30 to 2.49	16
2.50 to 2.74	18
2.75 to 2.89	20
2.90 to 3.04	22
3.05 to 3.19	24
3.20 or more	26

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 540

SENATE BILL NO. 2103  
(Committee on Industry, Business and Labor)  
(At the request of Job Service North Dakota)

### UNEMPLOYMENT COMPENSATION DECISION APPLICATION

AN ACT to create and enact a new section to chapter 52-06 of the North Dakota Century Code, relating to applicability of unemployment compensation decisions to separate proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-06 of the North Dakota Century Code is created and enacted as follows:

Applicability of decision to separate proceedings. Any finding of fact or law, judgment, conclusion, or decision made by a claims examiner, appeals referee, the bureau, or any person with the authority to make findings of fact or law in any action or proceeding before the bureau is not conclusive or binding on, nor may it be used as evidence in, any separate or subsequent action or proceeding unrelated to the North Dakota Unemployment Compensation Law, except for workers compensation purposes, between an individual and the individual's present or prior employer brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 541

SENATE BILL NO. 2515  
(Senators Keller, Thane)  
(Representatives Wentz, Oban)

### WORK FORCE 2000 PROGRAM

AN ACT to provide for work force development programs; to provide a statement of legislative intent; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. North Dakota work force 2000 policy and goals.

1. The legislative assembly finds that a highly skilled work force is critical to the present and future competitiveness of North Dakota's economy. The legislative assembly, therefore, declares that it is the policy of the state to support and promote skill training, retraining, and upgrade training for North Dakota workers. It is the goal of the state to:
  - a. Improve the skills of North Dakota workers;
  - b. Promote and sponsor effective and responsive training programs for employed and unemployed North Dakotans who need job-related training;
  - c. Promote programs that lead to family wage jobs;
  - d. Secure the active participation and full cooperation of North Dakota industry leaders, business owners, and employee representatives in developing programs to increase and improve worker skill training;
  - e. Promote the coordination of North Dakota's education and job training systems to more fully respond to the increasingly complex training needs of workers; and
  - f. Promote access to education and job training programs for all North Dakotans regardless of their economic status or geographic location within the state.
2. The legislative assembly declares that it is the policy of this state to integrate skill training and development programs into its economic development strategies.

SECTION 2. North Dakota work force 2000 program administration. Job service North Dakota shall administer the North Dakota work force 2000 program within the state.

1. Program priorities:



- a. Are compatible with statewide economic development strategies.
  - b. Demonstrate business and community financial support and participation.
  - c. Coordinate activities and resources with other training programs.
  - d. Provide for followup and evaluation of program results.
  - e. Provide customized, retraining, and upgrade training in occupations that pay not less than two hundred percent of the federal and state minimum wage.
  - f. Provide training to unemployed and employed residents of North Dakota for new and expanding businesses.
2. Program requirements:
- a. Only training for permanent jobs or occupations which have significant career opportunities and require substantive instructions will be considered for funding.
  - b. Training can include only upgrade training or retraining of current workers in situations where training is required for continued employment or to trainees as long as the company gives successful graduates hiring priority.
  - c. Only trainees approved by participating parties will be eligible.
  - d. Training will be limited to state residents.
  - e. All direct training costs are allowable and can include the following:
    - (1) Program promotion.
    - (2) Instructor wages, per diem, and travel.
    - (3) Curriculum development and training materials.
    - (4) Lease of training equipment and training space.
    - (5) Miscellaneous direct training costs.
    - (6) Administrative costs.
    - (7) Assessment and testing.

**SECTION 3. North Dakota work force 2000 priority of industry requirements.**

1. Assist companies that are undergoing major technological changes and where training is deemed critical to the company and in occupations that are deemed to have inadequate trained personnel.

2. Training assistance must be encouraged for small companies and companies located in rural areas.
3. Companies must be encouraged to participate with in-kind contributions of training space, training equipment, training supplies, and technical assistance.
4. Training programs must be designed with the direct participation of the sponsoring company and an employee representative.
5. If new job openings are created through upgrade training, the sponsoring company should give priority consideration to individuals eligible for other state and federal job training programs.

SECTION 4. North Dakota work force 2000 program implementation and coordination.

1. All programs must be conducted through contractual arrangements made with job service North Dakota.
2. Programs must be conducted in cooperation with appropriate state board for vocational education approved training providers and institutions.
3. Final screening of trainees must be conducted by the company with the assistance of job service North Dakota when required.
4. Program effectiveness will be determined by post-training monitoring that will address such issues as:
  - a. Company satisfaction with the program.
  - b. Company transition to new technologies or products.
  - c. Posttraining wage levels versus pretraining wage levels.
  - d. Number of trainees successfully completing the program.
  - e. Number of trainees who are retained by the company as a result of the training program.
  - f. Number of new jobs created at entry level as a result of upgrade training.

SECTION 5. North Dakota work force 2000 application procedure.

1. A proposal or concept paper must be submitted by the appropriate company, trade representative, or employee representative to job service North Dakota.
2. The proposal or concept paper should address the key guideline points but be kept brief.

SECTION 6. North Dakota work force 2000 gifts and grants. Job service North Dakota is authorized to accept and use any funds, including

gifts and grants, made available for the purpose of defraying expenses involved in carrying out this Act.

SECTION 7. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the North Dakota work force 2000 program receive priority consideration in grant allocation under the grant line item for the department of economic development and finance as provided in Senate Bill No. 2058 for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 8. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and from other income, to job service North Dakota for the purpose of defraying expenses of this Act, for the biennium beginning July 1, 1991, and ending June 30, 1993.

Salaries and wages	\$ 60,000
Operating expenses	15,000
Grants, benefits, and claims	425,000
Total all funds	<u>\$500,000</u>
Less estimated income	425,000
Total general fund appropriation	<u>\$ 75,000</u>

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 542

HOUSE BILL NO. 1189  
(Committee on State and Federal Government)  
(At the request of Job Service North Dakota)

### OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
- a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
  - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
  - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
  - c. (1) Effective July 1, ~~1989~~ 1991, ~~two~~ three hundred ~~sixty~~ dollars; or
  - (2) Effective July 1, ~~1990~~ 1992, ~~two~~ three hundred ~~eighty~~ twenty dollars.

Approved March 27, 1991  
Filed March 28, 1991

# SPORTS AND AMUSEMENTS

## CHAPTER 543

SENATE BILL NO. 2411  
(Senators Graba, Yockim)  
(Representatives St. Aubyn, Rydell, Oban)

### BOXING, KICKBOXING, AND SPARRING

AN ACT to amend and reenact sections 53-01-02, 53-01-03, 53-01-07, 53-01-09, 53-01-17, 53-01-18, and 53-01-19 of the North Dakota Century Code, relating to a state athletic advisory board, regulation of boxing, kickboxing, and sparring, and duties of the secretary of state; to repeal sections 53-01-08, 53-01-10, 53-01-12, 53-01-13, 53-01-15, and 53-01-16 of the North Dakota Century Code, relating to regulation of boxing, kickboxing, and sparring; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-02 of the North Dakota Century Code is amended and reenacted as follows:

53-01-02. ~~State Administration by secretary of state - Appointment of athletic commissioner advisory board. The secretary of state shall act as state athletic commissioner and administer this chapter. The secretary of state may appoint an athletic advisory board to assist and advise the secretary of state in matters relating to the regulation of boxing, kickboxing, and sparring. The secretary of state shall define the duties of the board. Members of the board shall serve without compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed state employees incurred in performing their official duties.~~

SECTION 2. AMENDMENT. Section 53-01-03 of the North Dakota Century Code is amended and reenacted as follows:

53-01-03. Restrictions. The secretary of state may not, directly or indirectly, promote any boxing, kickboxing, or sparring, or wrestling exhibition, nor engage in the managing of any boxer or wrestler kickboxer, nor or be interested in any manner in the proceeds from any boxing or wrestling, kickboxing, or sparring exhibition.

SECTION 3. AMENDMENT. Section 53-01-07 of the North Dakota Century Code is amended and reenacted as follows:

53-01-07. Duties of state athletic commissioner. The secretary of state shall ~~have charge and supervision of~~ supervise all boxing, kickboxing, or sparring exhibitions held in the state and may:

1. Make Adopt rules governing the conduct of boxing or, kickboxing, and sparring exhibitions.

2. ~~Issue licenses to individuals or organizations desiring to promote or conduct such exhibitions and suspend or revoke such licenses at pleasure.~~

~~The provisions of subsection 2 do not apply to any boxing or sparring exhibitions the net proceeds of which are to be devoted to charitable purposes. Charitable organizations conducting boxing and sparring exhibitions shall submit documents to the secretary of state providing proof of their nonprofit corporate status; shall submit a notification of contest naming contestants and other ring officials; and shall submit a final report showing the boxing exhibition results. Establish license fees for all boxers and kickboxers, and boxing, kickboxing, and sparring promoters, managers, and referees.~~

SECTION 4. AMENDMENT. Section 53-01-09 of the North Dakota Century Code is amended and reenacted as follows:

53-01-09. Moneys Fees paid into state treasury — Disbursement special fund - Continuing appropriation. All moneys fees collected by the secretary of state pursuant to the provisions of this chapter must be paid into the state treasury and must be disbursed only as other state funds are disbursed by law deposited in a special fund maintained in the state treasury. All money deposited in the fund is appropriated as a continuing appropriation to the secretary of state for administering this chapter and for the compensation and expenses of members of the athletic advisory board.

SECTION 5. AMENDMENT. Section 53-01-17 of the North Dakota Century Code is amended and reenacted as follows:

53-01-17. Exhibitions prohibited where illegal also governed by local ordinance. ~~Boxing, kickboxing, or sparring, or wrestling exhibitions provided for under this chapter may not be held in municipalities cities in which such contests or exhibitions are declared illegal by ordinance.~~ All boxing, kickboxing, or sparring, or wrestling exhibitions held in any municipality city in this state must be held in conformity with the ordinances of said municipality the city in addition to the requirements under this chapter.

SECTION 6. AMENDMENT. Section 53-01-18 of the North Dakota Century Code is amended and reenacted as follows:

53-01-18. Certain organizational and institutional matches exhibitions exempt. All boxing or sparring exhibitions conducted or promoted by the high schools, ~~the or~~ schools of higher learning, or amateur boxing or sparring sponsored by nonprofit organizations in this state, and those participating therein, exhibitions, must be conducted under the rules and supervision of the United States of America amateur boxing federation or its local affiliates and are exempted exempt from the provisions of this chapter.

SECTION 7. AMENDMENT. Section 53-01-19 of the North Dakota Century Code is amended and reenacted as follows:

53-01-19. Holding match or contest without license a misdemeanor.

†. Any person who, without a license from the secretary of state, shall:

- a. Send or cause to be sent, published, or otherwise made known, any challenge to fight or engage in any public boxing or sparring exhibition or contest, with or without gloves, for any prize, reward, or compensation, or at which any admission fee is charged, either directly or indirectly;
  - b. Go into training preparatory for such exhibition or contest; or
  - c. Act as a trainer, aider, arbiter, backer, referee, umpire, second, surgeon, assistant, or attendant at such exhibition or contest, or any preparation for the same; and
2. Any owner or lessee of any grounds, building, or structure, permitting the same to be used for such match, exhibition, or contest. Penalty. A person who violates this chapter or any rule adopted by the secretary of state is guilty of a class B misdemeanor. This section does not apply to boxing or sparring exhibitions held or to be held under a license issued by the secretary of state in keeping with the rules and regulations prescribed.

SECTION 8. REPEAL. Sections 53-01-08, 53-01-10, 53-01-12, 53-01-13, 53-01-15, and 53-01-16 of the North Dakota Century Code are repealed.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 544

SENATE BILL NO. 2381  
(DeKrey, Satrom)

### AMUSEMENT GAME OPERATORS FEES

AN ACT to amend and reenact section 53-04-02 of the North Dakota Century Code, relating to license fees for amusement game operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 53-04-02 of the North Dakota Century Code is amended and reenacted as follows:

53-04-02. Annual license required - Fee. A person may not operate, lease, or distribute an amusement game or device without first having obtained an annual license.

Licenses are of two types. An operator's license entitles the licensee to operate, lease, or distribute machines at locations not owned or managed by the licensee. The operator shall affix to each machine an operator's number provided by the attorney general. The operator shall have a business office within the state and a valid sales tax permit. A location license must be secured by an individual for any establishment managed or owned by that person. A location license entitles the licensee to have not more than ten machines at one location managed or owned by that individual. An individual is not entitled to more than one location license. The location license must be displayed on or near the machines.

The annual fee for an operator's license is seven hundred fifty one thousand dollars ~~for not more than one hundred machines~~, and two thousand dollars ~~for more than one hundred machines~~. The annual fee for a location license is twenty-five dollars per machine.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Section 53-04-02 was also amended by section 3 of Senate Bill No. 2174, chapter 78.



## CHAPTER 545

SENATE BILL NO. 2219  
 (Committee on Judiciary)  
 (At the request of the Attorney General)

## GAMING LAW REVISIONS

AN ACT to amend and reenact subsections 1, 6, and 10 of section 53-06.1-01, subsections 1 and 9 of section 53-06.1-06, subsection 2 of section 53-06.1-06.1, subsection 4 of section 53-06.1-07.2, and subsections 2, 3, and 4 of section 53-06.1-14 of the North Dakota Century Code, relating to games of chance laws, definitions of adjusted gross proceeds, distributor, and entire net proceeds, persons permitted to conduct games of chance, the frequency of work permit renewals, the assessable fee in poker, and to provide for the distribution of games of chance equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 1, 6, and 10 of section 53-06.1-01 of the 1990 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Adjusted gross proceeds" means, except in the case of the games of draw poker and stud poker authorized under section 53-06.1-07.2, gross proceeds less cash prizes or the price of merchandise prizes and the charitable gaming tickets excise tax imposed by section 53-06.1-12.2. In the games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the eligible organization.
6. "Distributor" means a person, firm, corporation, association, or organization which sells, markets, or otherwise distributes raffle tickets, bingo equipment, or any other implements of gambling usable in the lawful conduct of games of chance under this chapter; ~~to an organization licensed or authorized to conduct such games of chance under this chapter.~~ "Distributor" does not include a resident printer who prints raffle tickets at the request of a licensed or authorized organization, and who sells or otherwise distributes such raffle tickets to such organization.
10. "Entire net proceeds" or "net proceeds" means the adjusted gross proceeds less such expenses, ~~charges, fees, and taxes, and deductions~~ as are specifically authorized under this chapter.

\*\* SECTION 2. AMENDMENT. Subsections 1 and 9 of section 53-06.1-06 of the North Dakota Century Code are amended and reenacted as follows:

1. No person, except a member or employee of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting

\* NOTE: Section 53-06.1-01 was also amended by section 1 of House Bill No. 1050, chapter 547; by section 20 of Senate Bill No. 2001, chapter 28; and by section 1 of Senate Bill No. 2219, chapter 545.

\*\* NOTE: Section 53-06.1-06 was also amended by section 4 of House Bill No. 1597, chapter 549; by section 23 of Senate Bill No. 2001, chapter 28; by section 27 of Senate Bill No. 2068, chapter 54; and by section 1 of Senate Bill No. 2541, chapter 550.

of any game of chance under this chapter. However, a volunteer of an organization may sell raffle tickets.

9. No person convicted who has pled guilty to or been found guilty of a felony within the last two years, or may sell or distribute equipment, or conduct or assist in games of chance under this chapter for five years from the date of the conviction or release from incarceration, parole, or probation, whichever is the latter. No person determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter for a period determined by the attorney general.

\* SECTION 3. AMENDMENT. Subsection 2 of section 53-06.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The attorney general may establish a centralized statewide work permit system to determine the identity, prior activities, and present employment of all gaming employees in this state. The information must be held confidential except in the proper administration of this chapter or any rule adopted under this chapter, or to an authorized law enforcement agency. No gaming organization may employ any person or a gaming employee nor may any person be employed as a gaming employee unless that person possesses a current and valid work permit. The attorney general may issue, renew, deny, suspend, and revoke work permits. Subject to the attorney general's discretion, a temporary work permit may be issued. If an application is denied or a work permit is suspended or revoked, the notice by the attorney general must include a statement of the facts upon which the attorney general relied in making the decision. Any person whose application for a work permit has been denied may, not later than twenty days following receipt of the notice, apply to the attorney general for a hearing. A work permit expires unless renewed within fourteen days after a change of employment or if the person is not employed as a gaming employee within the state for more than ninety days. The attorney general may prescribe the frequency of the work permit renewals. The attorney general may issue an emergency order, effective upon service to the permitholder, suspending a person's work permit upon a determination that the suspension is necessary to preserve effective regulation and control of gaming, to preserve the public interest or morals, or the person obtained a work permit by misrepresentation. The attorney general may charge each gaming employee an annual work permit fee of twenty-five dollars and a fee of five dollars for each change of employment.

SECTION 4. AMENDMENT. Subsection 4 of section 53-06.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

4. The eligible organization shall assess each player a fee not to exceed two dollars per half hour of playing time by that person, collected in advance. A fee may also be charged each player for entry into a tournament for prizes which fee may be in lieu of or in addition to the fee assessable at one-half hour intervals.

\* NOTE: Subsection 2 of section 53-06.1-06.1 was also amended by section 2 of House Bill No. 1138, chapter 551.

\* SECTION 5. AMENDMENT. Subsections 2, 3, and 4 of section 53-06.1-14 of the 1990 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. No distributor may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to other licensed distributors, licensed organizations, ~~or~~ organizations that have been issued a local permit, gaming schools, or other persons authorized by the attorney general. A manufacturer of charitable gaming tickets or paper bingo cards may not sell, market, or otherwise distribute charitable gaming tickets or paper bingo cards, other than to a licensed distributor. A distributor of charitable gaming tickets or paper bingo cards must purchase or otherwise receive charitable gaming tickets or paper bingo cards only from a licensed manufacturer or licensed distributor.
3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No game of charitable gaming tickets, punchboards, sports pool boards, calcutta boards, or a series of raffle wheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. North Dakota licensed distributors shall purchase the North Dakota gaming stamps from the attorney general's office and the cost for each stamp may not exceed twenty-five cents.
4. No licensed or authorized eligible organization may be a distributor. No North Dakota wholesaler of liquor or alcoholic beverages may be a distributor. No North Dakota licensed manufacturer may be a distributor.

Approved April 5, 1991

Filed April 8, 1991

- \* NOTE: Section 53-06.1-14 was also amended by section 1 of House Bill No. 1052, chapter 554; by section 4 of House Bill No. 1290, chapter 552; and by section 28 of Senate Bill No. 2001, chapter 28.

## CHAPTER 546

SENATE BILL NO. 2063  
(Legislative Council)  
(Interim Judiciary Committee)

### FEDERAL GAMING EXCISE TAX DEDUCTION

AN ACT to amend and reenact subsection 1 of section 53-06.1-01 and subsection 3 of section 53-06.1-11 of the North Dakota Century Code, relating to the definition of adjusted gross proceeds with regard to charitable gaming activities and expenses allowed to charitable gaming organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Adjusted gross proceeds" means, except in the case of the games of draw poker and stud poker authorized under section 53-06.1-07.2, gross proceeds less cash prizes or the price of merchandise prizes and less the amount of federal excise tax and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401]. In the games of draw poker and stud poker, "adjusted gross proceeds" means the time buy-ins or tournament fees collected by the eligible organization.

SECTION 2. AMENDMENT. Subsection 3 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Subject to the limitations of this subsection, expenses incurred for games of chance may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed fifty percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. After December 31, 1989, cash shorts incurred in games of chance are classified as expenses toward the expense limitation. Notwithstanding the limitations of this subsection, in addition to the expenses allowed to be deducted from adjusted gross proceeds, an eligible organization may deduct as an expense federal excise taxes and interest imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401] and incurred or paid by the organization for the period beginning January 1, 1986, and ending as of July 1, 1991. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

Approved April 5, 1991  
Filed April 8, 1991

- \* NOTE: Section 53-06.1-01 was also amended by section 1 of House Bill No. 1050, chapter 547; by section 20 of Senate Bill No. 2001, chapter 28; and by section 1 of Senate Bill No. 2219, chapter 545.

## CHAPTER 547

HOUSE BILL NO. 1050  
(Legislative Council)  
(Interim Judiciary Committee)

### GAMING PROCEEDS USES

AN ACT to amend and reenact subsection 7 of section 53-06.1-01 of the North Dakota Century Code, relating to the definition of eligible uses of net proceeds from charitable gaming.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 7 of section 53-06.1-01 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:
  - a. To the extent used for purposes enumerated in subdivisions c through j 1, uses benefiting those organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.
  - b. To the extent used for purposes enumerated in subdivisions c through j 1, uses benefiting an organization registered with the North Dakota secretary of state under chapter 50-22.
  - c. Uses benefiting an indefinite number of persons ~~either~~ by bringing them under the influence of education, cultural programs, or religion ~~or relieving them of disease, suffering, or constraint~~ which include disbursements to provide:
    - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
    - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
    - (3) Assistance to libraries and museums.
    - (4) Assistance for the performing arts and humanities.
    - (5) Preservation of cultural heritage.
    - (6) Youth community and athletic activities.

\* NOTE: Section 53-06.1-01 was also amended by section 20 of Senate Bill No. 2001, chapter 28; by section 1 of Senate Bill No. 2063, chapter 546; and by section 1 of Senate Bill No. 2219, chapter 545.

- (7) Adult athletic activities, such as softball, including uniforms and equipment.
  - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
  - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Relief to an individual or family suffering from poverty or homelessness.
  - (2) Encouragement and enhancement of the active participation of the elderly in our society.
  - (3) Services to the abused.
  - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
  - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
  - (7) Funds for emergency relief and volunteer services.
  - (8) Funds to nonprofit nursing homes and other nonprofit medical facilities.
  - (9) Social services and education programs aimed at aiding the emotionally and physically distressed, handicapped, and underprivileged.
- ~~d-~~ e. (1) Fraternal uses, consistent with uses and priorities enumerated in subdivisions c through l and section 53-06.1-02, specified by an organization's constitution, charter, or bylaws not of direct benefit to the eligible organization or any member thereof.
- (2) Fraternal uses or disbursements to perpetuate the memory and history of the dead.
- ~~e-~~ f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants are excluded from receiving charitable gaming funds under this subdivision or any other provision of this chapter.

- ~~f~~- g. The erection or maintenance of public buildings or works, public utilities, or public waterworks.
- ~~g~~- h. Uses otherwise lessening the burden of government which include disbursements to any entity that is normally funded by the city, county, state, or United States government and disbursements directly to a city, county, state, or the United States government, or any agency, political subdivision, or instrumentality thereof.
- ~~h~~- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
- ~~i~~- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
- ~~j~~- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
- (1) Funds for adult bands, including drum and bugle corps.
  - (2) Funds for trade shows and conventions conducted in this state.
  - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife propagation and habitat enhancement program.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned or leased by an organization unless it is used exclusively for one or more of the stated eligible uses. Uses Eligible uses do not include any activities consisting of attempts to influence legislation, promote or oppose referendums or initiatives, or participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office. In addition, the licensing authority may adopt rules to limit or restrict eligible use disbursements to ensure that funds are best utilized for educational, charitable, fraternal, religious, patriotic, or other public-spirited purposes.

## CHAPTER 548

HOUSE BILL NO. 1051  
(Legislative Council)  
(Interim Judiciary Committee)

### CHARITABLE GAMING LICENSURE

AN ACT to amend and reenact subsections 3 and 5 of section 53-06.1-03 and section 53-06.1-16 of the North Dakota Century Code, relating to the licensure of charitable gaming organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 3 and 5 of section 53-06.1-03 of the North Dakota Century Code are amended and reenacted as follows:

3. The attorney general shall license ~~such~~ organizations ~~which~~ ~~that~~ conform to the requirements of this chapter by issuing licenses as follows:
  - a. A class A license to an eligible organization ~~licensed as a retail alcoholic beverage dealer in North Dakota that maintains a building for the use of its members and guests, and that offers meals or liquor, or both, as part of its operation that is prohibited because of its nature or purpose for existence from expending charitable gaming net proceeds for the organization's own purposes or benefit and is, therefore, required to disburse its net proceeds to beneficiaries for educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.~~
  - b. A class B license to ~~any other~~ an eligible organization ~~that is permitted because of its nature or purpose for existence to expend charitable gaming net proceeds for its own educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.~~ The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.
  - c. A class C license to an eligible organization that conducts games of chance on not more than two occasions per year, ~~regardless of whether that organization is licensed as a retail alcoholic beverage dealer in this state.~~
  - d. The attorney general shall establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the eligible

\* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1597, chapter 549, and by section 22 of Senate Bill No. 2001, chapter 28.



organization, and the adjusted gross proceeds collected or expected to be collected by the eligible organization.

5. The attorney general may, by motion, based on reasonable ground or upon written complaint, suspend or revoke, under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this subsection unless that organization conducts gaming determined to be in violation of chapter 12.1-28 or subsection 1 of section 53-06.1-07.

SECTION 2. AMENDMENT. Section 53-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16. Violation of chapter or rule - Misdemeanor - Forfeiture of licensure - Ineligibility. Any person who knowingly makes a false statement in any application for a license or authorizing resolution or in any statement annexed thereto, or who fails to keep sufficient books and records to substantiate the receipts, expenses, or uses resulting from games of chance conducted under this chapter, or who falsifies any books or records so far as they relate to any transaction connected with the holding, operating, and conducting of any game of chance, or who violates any of the provisions of this chapter, any rule adopted under this chapter, or of any term of a license is guilty of a class A misdemeanor. If convicted, the person forfeits any license or authorizing resolution issued to it pursuant to this chapter and is ineligible to reapply for a license or authorization for a period of time to be determined by the attorney general. Notwithstanding section 5-02-02, an eligible organization that possesses a license issued under chapter 5-02 may not have that license suspended, revoked, or denied in consequence of action taken under this section.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 549

HOUSE BILL NO. 1597  
(Representatives Williams, Wald, Oban)  
(Senators David, Langley)

### GAMING RENT, SITES, AND PULL TAB ASSISTANCE

AN ACT to amend and reenact subsection 4 of section 53-06.1-03, sections 53-06.1-03.2, 53-06.1-03.3, and 53-06.1-06 of the North Dakota Century Code, relating to the number of sites at which gaming may be conducted by certain organizations, rent limits for twenty-one and charitable gaming ticket sites, and conduct of pull tabs by employees of certain alcoholic beverage establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 4 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Games of chance may be operated or conducted only on premises or sites set forth in the application as follows:
  - ~~a.~~ ~~Class A license applicants are limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion per licensing year upon written request.~~
  - ~~b.~~ License applicants shall first secure approval of the proposed site or sites on which it intends to conduct games of chance under this chapter from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general. The governing body may charge a one hundred dollar fee for this permit.
  - ~~c.~~ b. Rented premises are subject to rules adopted by the attorney general.
  - ~~d.~~ c. Only one eligible organization at a time may be authorized to conduct games of chance at a specific location, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:
    - (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.
    - (2) Upon request of the licensee, the license is suspended for that specific day by the attorney general.

\* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1051, chapter 548, and by section 22 of Senate Bill No. 2001, chapter 28.

- e- d. Licenses, rules of play, and state identification devices must be displayed on forms and in the manner specified in rules adopted by the attorney general.

SECTION 2. AMENDMENT. Section 53-06.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03.2. Twenty-one sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than a site where bingo is the primary game of chance conducted, but where the game of twenty-one is conducted, the monthly rent may not exceed ~~one~~ two hundred ~~fifty~~ dollars multiplied by the number of tables on which the game of twenty-one is conducted.

SECTION 3. AMENDMENT. Section 53-06.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03.3. Charitable gaming ticket sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than a site where bingo is the primary game of chance conducted, the monthly rent may not exceed:

1. If the game of twenty-one is conducted on the site, in addition to the rent allowable for the game of twenty-one, ~~fifty~~ one hundred twenty-five dollars.
2. If the game of twenty-one is not conducted on the site, ~~one~~ two hundred ~~fifty~~ twenty-five dollars.

\* SECTION 4. AMENDMENT. Section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games of chance - Premises - Equipment - Compensation.

1. No person, except a member or employee of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting of any game of chance under this chapter. In the conduct of pull tabs, the attorney general may allow employees of licensed alcoholic beverage establishments to provide limited assistance to an authorized class B license holding eligible organization the adjusted gross proceeds of which do not exceed sixty thousand dollars per quarterly reporting period of operation or to any class A license holding eligible organization.
2. Except when authorized by the attorney general, no games of chance may be conducted with any gaming equipment other than gaming equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.
3. The governing board of an eligible organization is primarily responsible for the proper determination and distribution of the entire net proceeds of any game of chance held in accordance with this chapter.

\* NOTE: Section 53-06.1-06 was also amended by section 23 of Senate Bill No. 2001, chapter 28; by section 27 of Senate Bill No. 2068, chapter 54; by section 2 of Senate Bill No. 2219, chapter 545; and by section 1 of Senate Bill No. 2541, chapter 550.

4. The premises where any game of chance is being held, operated, or conducted, or where it is intended that such game will be held, must be open to inspection by the licensing authority, its agents and employees, by representatives of the governing body authorizing games of chance, and by peace officers of any political subdivision of this state.
5. When any merchandise prize is awarded in a game of chance, its value is its current retail price.
6. Equipment, prizes, and supplies for games of chance may not be purchased or sold at prices in excess of the usual price thereof.
7. The entire net proceeds derived from the holding of games of chance must be devoted within three months from the date such proceeds were earned to the uses permitted by this chapter. Any organization desiring to hold the net proceeds of games of chance for a period longer than three months from the date such proceeds were earned must apply to the licensing authority or governing body, as the case may be, for special permission, and upon good cause shown, the licensing authority or governing body may grant the request.
8. ~~Except at the temporary alternate site provided by subdivision a of subsection 3 of section 53-06-1-03, only the members of an organization licensed as a class A licensee by the attorney general under this chapter and their spouses and bona fide guests may participate in playing games of chance conducted by such licensed organization.~~
- ~~9.~~ No person convicted of a felony within the last two years, or determined by the attorney general to have participated in organized crime or unlawful gambling, may be permitted to sell or distribute equipment, or conduct or assist in games of chance under this chapter.
- ~~10.~~ 9. Any person involved with the conduct of games of chance must be:
  - a. A person of good character, honesty, and integrity.
  - b. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.
- ~~11.~~ 10. The attorney general may prohibit a person from playing games of chance if the person violates any provision of this chapter or any rule adopted under this chapter.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 550

SENATE BILL NO. 2541  
(Wogsland)

### PULL TABS ASSISTANCE

AN ACT to amend and reenact subsection 1 of section 53-06.1-06 of the North Dakota Century Code, relating to persons permitted to conduct games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, except a member or employee of an eligible organization or a member of an organization auxiliary to an eligible organization, may assist in the holding, operating, or conducting of any game of chance under this chapter. The attorney general may allow employees of specific licensed alcoholic beverage establishments to provide limited assistance to authorized eligible organizations in the conduct of pull tabs at licensed gaming sites where adjusted gross proceeds do not exceed fifty thousand dollars per site per year.

Approved April 17, 1991  
Filed April 18, 1991

- \* NOTE: Section 53-06.1-06 was also amended by section 4 of House Bill No. 1597, chapter 549; by section 23 of Senate Bill No. 2001, chapter 28; by section 27 of Senate Bill No. 2068, chapter 54; and by section 2 of Senate Bill No. 2219, chapter 545.

## CHAPTER 551

HOUSE BILL NO. 1138  
(Committee on Judiciary)  
(At the request of the Attorney General)

### GAMING APPLICANT BACKGROUND INVESTIGATIONS

AN ACT to create and enact a new subsection to section 53-06.1-14 of the North Dakota Century Code, relating to the costs of background investigations of gaming applicants; and to amend and reenact section 51-15-10, subsection 2 of section 53-06.1-06.1, and section 54-12-18, relating to costs, expenses, attorney's fees, and costs of background investigations for gaming applicants recovered by the attorney general and deposited into a special fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-15-10 of the North Dakota Century Code is amended and reenacted as follows:

51-15-10. Costs recoverable. In any action brought under the provisions of this chapter, the attorney general is entitled to recover costs, expenses, and attorney's fees incurred by the attorney general in the investigation and prosecution of such action. In any inquiry or investigation initiated under this chapter in which fraud is determined, the attorney general may request and collect costs, expenses, and attorney's fees incurred by the attorney general in the inquiry or investigation. All costs, expenses, and attorney's fees received by the attorney general under this section must be deposited into the attorney general refund fund.

\* SECTION 2. AMENDMENT. Subsection 2 of section 53-06.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The attorney general may establish a centralized statewide work permit system to determine the identity, prior activities, and present employment of all gaming employees in this state. The information must be held confidential except in the proper administration of this chapter or any rule adopted under this chapter, or to an authorized law enforcement agency. No gaming organization may employ any person or a gaming employee nor may any person be employed as a gaming employee unless that person possesses a current and valid work permit. The attorney general may issue, renew, deny, suspend, and revoke work permits. Subject to the attorney general's discretion, a temporary work permit may be issued. If an application is denied or a work permit is suspended or revoked, the notice by the attorney general must include a statement of the facts upon which the attorney general relied in making the decision. Any person whose application for a work permit has been denied may, not later than twenty days following receipt of the notice, apply to the attorney general for a hearing. A work permit expires unless renewed within fourteen

\* NOTE: Subsection 2 of section 53-06.1-06.1 was also amended by section 3 of Senate Bill No. 2219, chapter 545.

days after a change of employment or if the person is not employed as a gaming employee within the state for more than ninety days. The attorney general may issue an emergency order, effective upon service to the permitholder, suspending a person's work permit upon a determination that the suspension is necessary to preserve effective regulation and control of gaming, to preserve the public interest or morals, or the person obtained a work permit by misrepresentation. The attorney general may charge each gaming employee an annual work permit fee of twenty-five dollars and a fee of five dollars for each change of employment. In addition to the basic permit fees, the attorney general may require payment of any additional fees necessary to defray the actual costs of a background investigation of applicants for whom adequate background information sources are not readily available, including applicants who have not resided in the state for at least one year. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the investigation. The attorney general shall notify the applicant as soon as possible after a determination is made that the additional fee is necessary and shall also notify the applicant of the attorney general's best estimate of the amount of the additional license fee. In lieu of paying the additional cost, any applicant may withdraw the application. The estimated cost must be placed into the attorney general's refund fund for use to defray the actual expenses of the background investigation. The remainder of such funds must be returned to the applicant within thirty days of the conclusion of the investigation.

SECTION 3. A new subsection to section 53-06.1-14 of the 1990 Special Supplement to the North Dakota Century Code is created and enacted as follows:

In addition to the basic license fee, the attorney general may require payment of any additional fee necessary to defray the actual costs of a background investigation of applicants. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the investigation. The attorney general shall notify the applicant as soon as possible after a determination is made that the additional fee is necessary and shall also notify the applicant of the attorney general's best estimate of the amount of the additional license fee. Any applicant may then withdraw the application in lieu of paying the additional cost. The estimated cost must be placed into the attorney general's refund fund for use to defray the actual expenses of the background investigation. The remainder of such funds must be returned to the applicant within thirty days of the conclusion of the investigation.

SECTION 4. AMENDMENT. Section 54-12-18 of the North Dakota Century Code is amended and reenacted as follows:

54-12-18. Special fund established - Continuing appropriation. A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer fraud division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws, all costs, expenses, attorney's fees, and civil penalties collected by the

division regarding any consumer fraud or antitrust matter, and all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer fraud and antitrust division on behalf of consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees; and
3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims;
4. To pay costs, expenses, and attorney's fees and salaries incurred in the operation of the consumer fraud division; and
5. To pay the actual costs of a background investigation of applicants for a gaming employee work permit.

At the end of each fiscal year any moneys in the fund in excess of the amounts required for subsections 1, 2, 3, and 5 must be deposited in the general fund. The attorney general, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for use of the attorney general refund fund, particularly with respect to expenditures under subsection 4.

Approved April 16, 1991

Filed April 18, 1991



## CHAPTER 552

HOUSE BILL NO. 1290  
(Representatives Stofferahn, Kretschmar)  
(Senators Lindgren, Kelsh)

### PADDLEWHEELS

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the conduct and play of the game of paddlewheels; and to amend and reenact subsection 1 of section 53-06.1-07, section 53-06.1-07.1, and subsection 3 of section 53-06.1-14 of the North Dakota Century Code, relating to allowing eligible organizations to conduct the game of paddlewheels, player age restriction, hours of conduct, and state gaming stamp requirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Paddlewheels. An eligible organization may conduct the game of paddlewheels on the authorized site. The eligible organization shall post at the site all rules affecting the conduct of paddlewheels and requirements of players. A paddlewheel is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer or marker to indicate the winning number or symbol. The maximum price per paddlewheel ticket may not exceed two dollars. No money may be allowed on the playing table. A table must be used to register a player's wagered paddlewheel ticket when a cash prize is a variable multiple of the price of the paddlewheel ticket. No player may place more than ten paddlewheel tickets on each spin of the paddlewheel. Cash, chips, or merchandise prizes may be awarded. No single cash prize, value of chips, or the current retail price of the merchandise prize to be awarded for a winning paddlewheel ticket may exceed one hundred dollars. The monthly rent for each paddlewheel playing table may not exceed the amount authorized by law for a twenty-one table.

SECTION 2. AMENDMENT. Subsection 1 of section 53-06.1-07 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Eligible organizations licensed by the attorney general shall be permitted to conduct bingo, raffles, calcuttas, charitable gaming tickets, punchboards, twenty-one, paddlewheels, and sports pools for professional sports only.

SECTION 3. AMENDMENT. Section 53-06.1-07.1 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not participate in placing a wager in the games of charitable gaming tickets, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. A person under eighteen years of age not accompanied by an adult may not participate in the game of bingo unless the bingo game is locally authorized under section 53-06.1-03 or the game's prize structure does not exceed those allowed under section 53-06.1-03 for locally authorized games. The games of charitable gaming tickets, punchboards, twenty-one, paddlewheels, or sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

\* SECTION 4. AMENDMENT. Subsection 3 of section 53-06.1-14 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. No game of charitable gaming tickets, punchboards, sports pool boards, or a series of ~~raffle wheel~~ paddlewheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. North Dakota licensed distributors shall purchase the North Dakota gaming stamps from the attorney general's office and the cost for each stamp may not exceed twenty-five cents.

Approved March 20, 1991  
Filed March 21, 1991

\* NOTE: Section 53-06.1-14 was also amended by section 1 of House Bill No. 1052, chapter 554; by section 28 of Senate Bill No. 2001, chapter 28; and by section 5 of Senate Bill No. 2219, chapter 545.

## CHAPTER 553

HOUSE BILL NO. 1053  
(Legislative Council)  
(Interim Judiciary Committee)

### TIP POOLING

AN ACT to amend and reenact section 53-06.1-10 of the North Dakota Century Code, relating to the playing of twenty-one and pooling of tips received by twenty-one dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one - Sale of chips - Redemption - Wager - Limit - Rules of play - Tips. Any licensee may conduct and control the playing of the card game twenty-one on the authorized site of the licensee, but at no other location. No money may be allowed on the table. The licensee shall provide playing chips of various denominations to the participants. Chips must be redeemed by the licensee for their full value. The maximum limit per wager may be set by the licensee or eligible organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer must be a representative of the eligible organization sponsoring the game of chance. Each player plays the player's hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is an automatic payout except in case of a tie count with the dealer. Players may double down on a natural twenty-one. In the case of matching or tie count between the player and the dealer, no winner is declared and the player keeps the player's wager. A licensee may allow the pooling of tips received by dealers at an authorized site. Any requirement to pool tips is within the sole discretion of each licensee and may not be imposed or encouraged by the licensing authority. Each licensee conducting twenty-one shall post rules relating to the conduct of the game in a conspicuous location near where the game is played.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 554

HOUSE BILL NO. 1052  
(Legislative Council)  
(Interim Judiciary Committee)

### CHARITABLE GAMING EQUIPMENT MANUFACTURERS

AN ACT to amend and reenact subsection 1 of section 53-06.1-14 of the North Dakota Century Code, relating to license fees for manufacturers of charitable gaming tickets and paper bingo cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-14 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every manufacturer of charitable gaming tickets, every manufacturer of paper bingo cards, and every distributor shall annually apply for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand five hundred dollars, and the license fee for a manufacturer of charitable gaming tickets ~~or a manufacturer of~~ paper bingo cards, or both, is two thousand dollars.

Approved March 18, 1991  
Filed March 19, 1991

- \* NOTE: Section 53-06.1-14 was also amended by section 4 of House Bill No. 1290, chapter 552; by section 28 of Senate Bill No. 2001, chapter 28; and by section 5 of Senate Bill No. 2219, chapter 545.

## CHAPTER 555

HOUSE BILL NO. 1253  
(Cleary)

### **GAMES OF CHANCE CONDITIONAL LICENSES**

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to the issuance of conditional licenses to conduct games of chance; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-06.1 of the North Dakota Century Code is created and enacted as follows:

Conditional license - Issuance. The attorney general, upon application and at the attorney general's discretion, may issue a conditional license to conduct games of chance to an eligible organization whose regularly issued license has been suspended or revoked for a violation of this chapter. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions for issuance of the license as the attorney general determines necessary. Section 53-06.1-16.2 does not apply to an eligible organization to whom a conditional license is issued pursuant to this section.

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

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 556

HOUSE BILL NO. 1260  
(Representatives Tollefson, Kretschmar, Flaagan)  
(Senators Langley, Krebsbach, Meyer)

### PARIMUTUEL RACING EXPENSES

AN ACT to amend and reenact subsection 1 of section 53-06.2-01, subsection 7 of section 53-06.2-04, sections 53-06.2-05, 53-06.2-06, 53-06.2-10.1, and 53-06.2-11 of the North Dakota Century Code, relating to the definitions of breeders' fund and purse fund for parimutuel horse racing, duties and powers of the North Dakota racing commission, organizations eligible to conduct racing and simulcast parimutuel wagering, and payoff formulas for parimutuel wagering; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 53-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Breeders' fund" means a fund, administered by the commission, established to financially reward breeders or owners of North Dakota bred horses that win races in the state as approved by the commission.

SECTION 2. AMENDMENT. Subsection 7 of section 53-06.2-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Exclude from racecourses racetracks or simulcast parimutuel wagering facilities any person who violates any rule of the commission or any law.

SECTION 3. AMENDMENT. Section 53-06.2-05 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-05. Powers of commission. The commission may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records are to be kept.
2. Investigate the operations of any licensee and enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter, and to discover and seize any evidence of noncompliance.

3. Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and horses that are lawfully on a racetrack.
4. License all participants in the racing and simulcast parimutuel wagering industry and require and obtain information the commission deems necessary from license applicants. The commission may obtain from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process.
5. Adopt additional rules under which all horse races are conducted for the administration, implementation, and regulation of activities conducted pursuant to this chapter.

SECTION 4. AMENDMENT. Section 53-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-06. Organizations eligible to conduct racing and simulcast parimutuel wagering. Civic and service clubs, charitable, fraternal, religious, and veterans' organizations, and other public-spirited organizations may be licensed to conduct racing and simulcast parimutuel wagering as authorized by this chapter.

SECTION 5. AMENDMENT. Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-10.1. ~~offtrack~~ Simulcast wagering. In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, ~~offtrack~~ simulcast parimutuel wagering may be conducted in accordance with this chapter and interim standards that need not comply with chapter 28-32, or rules adopted by the commission under this chapter. Any organization qualified under section 53-06.2-06 to conduct racing may make written application to the commission for the conduct of ~~offtrack~~ simulcast parimutuel wagering on races held at licensed ~~race courses~~ racetracks inside the state or ~~race courses~~ racetracks outside the state, or both. Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Any time that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the commission, may adopt the take-out of the host jurisdiction or facility. The commission may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction, and may allow parimutuel pools in other states to be combined with parimutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Parimutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or international combined wagering pool other than amounts wagered within this jurisdiction. Breakage for interstate or international combined wagering pools must be calculated in accordance with the statutes or rules of the host jurisdiction, and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

SECTION 6. AMENDMENT. Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.

1. For each day of a live race meet at which the aggregate amount of the or a simulcast day in this state on win, place, and show parimutuel pool for the day exceeds twenty-five thousand dollars pools, the licensee shall deduct up to twenty percent of the total win, place, and show pool. The licensee may retain fifteen seventeen percent of the amount exceeding twenty five thousand dollars and sixteen percent of the amount less than twenty-five thousand dollars for expenses. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. The remaining four two percent of the amount exceeding twenty five thousand dollars, and three percent of the amount less than twenty five thousand dollars, must be paid to the state treasurer to be deposited in the general fund.
2. For each day of a live race meet or a simulcast day in this state for each daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct up to twenty-five percent of each wagering pool. Of this amount, the licensee may retain twenty twenty-one percent for expenses. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. The remaining four three percent must be paid to the state treasurer to be deposited in the general fund.
3. Unclaimed tickets and breakage from each live race meet as defined by the commission must be paid to the state treasurer as prescribed by the commission must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission. Unclaimed tickets and breakage from the simulcast program, as defined by the commission, must be retained by the commission in a special fund to assist in improving and upgrading racetracks in the state, for the promotion of horse racing within the state, and in developing new racetracks in the state as necessary and approved by the commission.
4. The licensee conducting a live race meet or simulcast program shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate



system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 7 of section 53-06.1-01.

6. The racing commission shall deposit the moneys received pursuant to subsections 1, 2, and 3 in three special funds in the state treasury. These funds must be known as the breeders' fund, the purse fund, and the racing promotion fund. Moneys, and any earnings on the moneys, in the breeders' fund, purse fund, and racing promotion fund are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1991  
Filed April 8, 1991

## CHAPTER 557

SENATE BILL NO. 2354  
(Senators O'Connell, Meyer, Streibel)  
(Representatives Skar, Thorpe, Kolbo)

### RACING COMMISSION MEMBERS

AN ACT to amend and reenact subsection 1 of section 53-06.2-02 of the North Dakota Century Code, relating to membership of the racing commission; and to provide for transition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota racing commission is established in the office of the attorney general. The commission consists of the chairman and four other members appointed by the governor, ~~with the consent of the senate~~. Of the members appointed by the governor, one must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

SECTION 2. TRANSITION. The governor shall appoint a new member to the commission as provided in section 1 of this Act upon the expiration of the term of each member serving on the effective date of this Act.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Subsection 1 of section 53-06.2-02 was also amended by section 1 of Senate Bill No. 2105, chapter 558.

## CHAPTER 558

SENATE BILL NO. 2105  
(Committee on State and Federal Government)  
(At the request of the Governor)

### **RACING COMMISSION CONFIRMATION ELIMINATED**

AN ACT to amend and reenact subsection 1 of section 53-06.2-02 of the North Dakota Century Code, relating to removal of the requirement of senate confirmation of the appointment of members to the racing commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

1. A North Dakota racing commission is established in the office of the attorney general. The commission consists of the chairman and four other members appointed by the governor, ~~with the consent of the senate~~. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.

Approved March 14, 1991  
Filed March 15, 1991

\* NOTE: Subsection 1 of section 53-06.2-02 was also amended by section 1 of Senate Bill No. 2354, chapter 557.

## CHAPTER 559

SENATE BILL NO. 2193  
(Committee on Judiciary)  
(At the request of the North Dakota Racing Commission)

### **BREEDERS' AND PURSE FUNDS INVESTMENT**

AN ACT to create and enact a new subsection to section 53-06.2-11 of the North Dakota Century Code, relating to investment of the breeders' fund and purse fund and the use of income generated; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 53-06.2-11 of the North Dakota Century Code is created and enacted as follows:

The racing commission shall deposit the moneys received pursuant to subsections 1 and 2 in two special funds in the state treasury. These funds must be known as the breeders' fund and the purse fund. Moneys, and any earnings on the moneys, in the special breeders' and purse funds are appropriated to the commission on a continuing basis to carry out the purposes of those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 560

HOUSE BILL NO. 1270  
(Representatives Thompson, Boehm)  
(Senator O. Hanson)

### EQUINE ACTIVITY LIABILITY LIMITATION

AN ACT to create and enact a new chapter to title 53 of the North Dakota Century Code, relating to the limitation of liability of an equine activity sponsor or an equine professional; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 53 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Engages in an equine activity" means a person who rides, trains, drives, or is a passenger upon an equine, whether mounted or unmounted, and does not mean a spectator in equine activity or a person who participates in the equine activity but does not ride, train, drive, or ride as a passenger upon an equine.
2. "Equine" means a horse, pony, mule, donkey, or hinny.
3. "Equine activity" means:
  - a. An equine show, fair, competition, performance, or parade that involves any breed of equine in any equine discipline, including dressage, a hunter and jumper horse show, grand prix jumping, a three-day event, combined training, a rodeo, driving, pulling, cutting, polo, steeplechasing, endurance, trail riding, guided trail rides, pleasure trail riding, wagon and buggy rides, and western games, and hunting;
  - b. An equine training or teaching activity;
  - c. Boarding an equine;
  - d. Riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine;
  - e. A ride, trip, hunt, or other equine activity of any type however informal or impromptu that is sponsored by an equine activity sponsor.

4. "Equine activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facility for an equine activity including but not limited to: a pony club, 4-H club, hunt club, riding club, school or college-sponsored class or program, therapeutic riding program, and an operator, instructor, or promotor of an equine facility including but not limited to a stable, clubhouse, pony ride string, fair, or arena at which the activity is held.
5. "Equine professional" means a person engaged for compensation in:
  - a. Instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon an equine; or
  - b. In renting equipment or tack to a participant.
6. "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

Liability of equine activity sponsor or equine professional limited.

1. Except as provided in subsection 2, an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant engaged in an equine activity, and, except as provided in subsection 2, no participant or participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity. This chapter does not apply to the horse racing industry as regulated in chapter 53-06.2.
2. Nothing in subsection 1 prevents or limits the liability of an equine activity sponsor or an equine professional:
  - a. If the equine activity sponsor or the equine professional:
    - (1) Provided the equipment or tack and the equipment or tack caused the injury; or
    - (2) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, to determine the ability of the equine to behave safely with the participant, and to determine the ability of the participant to safely manage the particular equine;
  - b. If the equine activity sponsor or the equine professional owns, leases, rents, or otherwise is in lawful possession and control of the land or facility upon which the participant sustained an injury because of the dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which a warning sign has not been conspicuously posted;

- c. If the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury;
- d. If the equine activity sponsor or the equine professional intentionally injures the participant;
- e. Under products liability provisions as set forth in products liability laws; or
- f. Under liability provisions in chapter 36-11.

SECTION 2. APPLICATION OF ACT. This Act applies only to causes of action filed on or after the effective date of this Act.

Approved March 27, 1991  
Filed March 28, 1991

# STATE GOVERNMENT

## CHAPTER 561

SENATE BILL NO. 2284  
(Senator Tallackson)  
(Representatives Skjerven, Gorder)

### DEVELOPMENTAL CENTER LAND TRANSFER

AN ACT to amend and reenact sections 54-01-05.2 and 54-01-05.5 of the North Dakota Century Code, relating to sale or exchange of state land; to authorize the director of the department of human services to transfer title and convey certain land at the state developmental center at Grafton to the city of Grafton; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. STATE DEVELOPMENTAL CENTER AT GRAFTON LAND TRANSFER AUTHORIZED. The director of the department of human services may transfer title and convey the following property to the city of Grafton for the respective purchase prices:

1. A parcel consisting of the east half of the southeast quarter of section fourteen, township one hundred fifty-seven north of range fifty-three west, except right of way, containing 78.02 acres, more or less. The purchase price of this parcel is \$105,000.
2. A parcel consisting of the northwest quarter of the southeast quarter and the northeast quarter of the southwest quarter of section fourteen, township one hundred fifty-seven north of range fifty-three west, containing 80.0 acres, more or less, subject to a lease of ten acres for the midcontinent cable company tower. The purchase price of this parcel is \$95,000.

The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

SECTION 2. AMENDMENT. Section 54-01-05.2 of the North Dakota Century Code is amended and reenacted as follows:

54-01-05.2. Sale of state-owned land - Notice. Except as provided by section 54-01-05.5, whenever any department or agency of the state other than the board of university and school lands, the housing finance agency, and the Bank of North Dakota is authorized to sell such real property, the property must be sold for cash by the county auditor or other person designated by the department or agency concerned at public auction at the front door of the courthouse in the county in which the property lies. A notice of sale must have been published in the official newspaper of the county in which the property lies for three successive weeks, with the last publication not less than ten days before the day of sale. The notice must be given in the name of the administrative head of the department or agency concerned, and must state the place, day, and hour of the sale, the description of the real property to be sold, the appraised value, and that the state reserves the



right to reject any and all bids. No land may be sold at auction for less than the appraised value. In addition to the purchase price at auction, the buyer must pay the cost of preparing the land for sale. For a land sale or exchange when the value of the land is not more than one hundred thousand dollars, one appraisal must be obtained, and when the value of the land is in excess of one hundred thousand dollars, two appraisals must be obtained. If more than one appraisal is obtained, the appraised value of the land is the average of the two appraisals. If no bid is received on the land at public auction, the land may be sold for not less than ninety percent of the appraised value.

SECTION 3. AMENDMENT. Section 54-01-05.5 of the North Dakota Century Code is amended and reenacted as follows:

54-01-05.5. Bills authorizing sale or exchange of state-owned land to be prefiled - Written report to accompany bill - Commissioner of university and school lands to give opinion Opinion.

1. Every legislative bill authorizing the sale or exchange of state-owned land must be prefiled with the legislative assembly by the first day of the organizational session in December of each even-numbered year; legislative bills authorizing the sale of state-owned land must provide for sale at public auction.
2. A written report from the The supervising agency, board, commission, department, or institution owning or controlling the land must accompany each legislative bill and must include the following proposed by a bill introduced in the legislative assembly to be sold or exchanged shall prepare a written report that includes:
  - a. An analysis of the type of land involved.
  - b. A title opinion and an updated abstract of title for land sales or exchanges.
  - c. A determination whether the land is needed for present or future uses of the agency, board, commission, department, or institution.
  - d. A description of the party or parties, if known, who are interested in the land and the purposes for which the land is desired.
  - e. A determination whether it is or is not in the best interests of the state to sell or exchange the land.
  - f. One appraisal for land sales or exchanges when the value of the land is fifty thousand dollars or less; and two or more appraisals when the value of the land is in excess of fifty thousand dollars.
  - g. d. A map showing the boundaries of the land proposed to be sold or exchanged; the present ownership of lands adjacent to such land; and the purposes for which the adjacent lands are used. The legal description of the land shall be determined by a land surveyor registered pursuant to chapter 43-19-1.

- 3- 2. The commissioner of university and school lands shall review each legislative bill proposing the sale or exchange of state-owned land and the written report from the supervising agency, board, commission, department, or institution prior to the beginning of the regular legislative session. The commissioner shall then issue a written opinion to the standing committee of the legislative assembly to which the bill is initially referred concerning the proposed land sale or exchange and, in doing so, shall consider the "highest and best use" of the land as defined by section 15-02-05.1.
- 4- 3. If a legislative bill required to be prefiled pursuant to this section becomes law, land to be sold must be offered at public auction conducted by the commissioner of university and school lands pursuant to rules promulgated by the commissioner. No land may be sold at auction for less than appraised value. The buyer or buyers shall additionally pay the cost of preparing the land for sale as determined by the commissioner. If more than one appraisal is provided, the appraised value of the land to be sold must be as determined by the commissioner, but may not be less than the lowest appraisal or higher than the highest appraisal.
- 5- All rules adopted by the The commissioner under may adopt rules to provide for administration of this section must be adopted pursuant to chapter 20-32 and must be published in the North Dakota Administrative Code.

SECTION 4. PROCEEDS - APPROPRIATION. The proceeds from the sale of land at the state developmental center at Grafton must be deposited in the lands and minerals trust fund. There is hereby appropriated \$200,000, or so much thereof as may be necessary, from the lands and minerals trust fund, to the department of human services for capital improvements or demolition of existing buildings at the state developmental center at Grafton for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 562

HOUSE BILL NO. 1380  
(Representatives Martinson, Carlisle, Mutzenberger)  
(Senators Satrom, Evanson)

### BURLEIGH COUNTY LAND SALE

AN ACT to authorize the director of institutions to sell and convey certain land belonging to the state of North Dakota to Burleigh County for use as fairgrounds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Sale of land - Proceeds. The director of institutions may sell and convey the following property to Burleigh County, North Dakota for use as fairgrounds:

All that part of the southeast quarter of section 2, township 138 north, range 80 west of the fifth principal meridian, Burleigh County, North Dakota that lies southeasterly of the Bismarck Expressway right of way and north of old-old highway 10 and its connection with Bismarck Expressway, containing 52.74 acres, more or less.

If as a result of passage of Senate Bill No. 2245 by the fifty-second legislative assembly the office of the director of institutions ceases to exist, the office of management and budget shall perform the powers and duties of the director of institutions under this Act.

The property must be sold at not less than fair market value, based upon a current independent appraisal. The state must reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale authorized by this Act. The proceeds realized from the sale authorized by this Act must be deposited in the North Dakota state penitentiary land fund. The property sold under the authority of this Act must be used for fairgrounds.

The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of institutions in any transaction under this Act. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required by any transaction under this Act.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 563

HOUSE BILL NO. 1611  
(Representatives Kloubec, Schneider)  
(Senators Heigaard, Nelson)  
(Approved by the Committee on Delayed Bills)

### LEGISLATIVE REDISTRICTING

AN ACT to amend and reenact section 54-03-01.5 of the North Dakota Century Code, relating to legislative apportionment requirements; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-01.5 of the North Dakota Century Code is amended and reenacted as follows:

54-03-01.5. Legislative apportionment requirements. A legislative apportionment plan based on any census taken after ~~1979~~ 1989 must meet the following requirements:

1. The senate must consist of ~~forty to fifty-four~~ forty-nine members and the house must consist of ~~eighty to one hundred eight~~ ninety-eight members.
2. Except as provided in subsection 3, one senator and two representatives must be apportioned to each senatorial district. Representatives may be elected at large or from subdistricts.
3. Multimember senate districts providing for two senators and four representatives are authorized only when a proposed single member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of the proposed single member senatorial district.
4. Legislative districts and subdistricts must be compact and of contiguous territory.
5. Legislative districts must be as nearly equal in population as is practicable. Population deviation from district to district must be kept at a minimum. The total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that any legislative council committee conducting a legislative apportionment study during the 1991-92 interim will consider apportionment plans that provide for at least forty-nine senatorial districts but not more than fifty-three senatorial districts.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 564

SENATE BILL NO. 2071  
(Legislative Council)  
(Interim Legislative Management Committee)

### LEGISLATIVE VOUCHER APPROVAL

AN ACT to amend and reenact section 54-03-11 of the North Dakota Century Code, relating to approval of vouchers for payment of legislative costs and expenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-11 of the North Dakota Century Code is amended and reenacted as follows:

54-03-11. Payment of legislative costs and expenses - President pro tempore of the senate and speaker of the house jointly approve vouchers. During any legislative session, the speaker of the house and the president pro tempore of the senate, or persons designated by the speaker and the president pro tempore, ~~shall~~ on behalf of the legislative assembly and without further legislative action, jointly shall approve vouchers for payment of compensation, salaries, and other costs of operation and expenses of the legislative assembly, its committees, and its employees within the limits of ~~special, general, or standing~~ legislative appropriations.

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

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 565

SENATE BILL NO. 2072  
(Legislative Council)  
(Interim Legislative Management Committee)

**SENATE AND HOUSE SECRETARY AND CLERK DUTIES**

AN ACT to amend and reenact section 54-03-12 of the North Dakota Century Code, relating to the duties of the secretary of the senate and the chief clerk of the house of representatives; to repeal section 54-03-13 of the North Dakota Century Code, relating to the duties of the secretary of the senate and the chief clerk of the house; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-12 of the North Dakota Century Code is amended and reenacted as follows:

54-03-12. Duties of secretary of senate and chief clerk of house ~~during legislative session~~. The secretary of the senate and chief clerk of the house of representatives shall-

- 1- ~~Keep correct journals of the proceedings of their respective houses.~~
- 2- ~~Have the custody of all records, accounts, and other papers committed to them.~~
- 3- ~~At the close of each session of the legislative assembly, deposit for safekeeping in the office of the secretary of state, all books, bills, documents, resolutions, and papers in the possession of the legislative assembly, correctly labeled, folded, and classified. The journals need not be deposited until they are completed fully and are indexed.~~
- 4- ~~Perform such other perform the duties as are assigned required of them by their respective houses the rules of the senate and the house of representatives, as appropriate.~~

SECTION 2. REPEAL. Section 54-03-13 of the North Dakota Century Code is repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 566

HOUSE BILL NO. 1074  
(Representative Stofferahn)  
(Senator Wogsland)

### LEGISLATOR EXPENSE ELECTION ELIMINATED

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, to delete the option of members of the legislative assembly to receive meals reimbursement in lieu of a portion of compensation and to receive monthly amounts as reimbursement for uncompensated expenses rather than as compensation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-20 of the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day during any organizational, special, or regular legislative session. ~~Each member of the legislative assembly whose home is ten miles (16.09 kilometers) or more from the capitol may make an election once during each organizational, special, or regular legislative session; binding for the remainder of the legislative session; to receive as compensation for services the sum of seventy three dollars for each calendar day and to receive expense reimbursement for meals upon claims as provided in section 44-08-04.~~ Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may not exceed thirty-five cents per mile based upon air mileage. Members of the legislative assembly who do not receive reimbursement for lodging and who do not live in a legislative district completely or partially within the city of Bismarck are entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between their residences and the place of meeting of the legislative assembly when it is in session, provided that this reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member shall receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. ~~Each member of the legislative assembly may make an election, binding for the legislator's term of office, to receive the one hundred eighty dollars a month as reimbursement for uncompensated expenses, rather than as compensation.~~ If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 1991.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 567

HOUSE BILL NO. 1056  
(Legislative Council)  
(Interim Legislative Management Committee)

### ENGROSSING AND ENROLLING

AN ACT to repeal chapter 54-04 of the North Dakota Century Code, relating to the engrossing and enrolling of legislative bills and resolutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 54-04 of the North Dakota Century Code is repealed.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 568

SENATE BILL NO. 2244  
 (Committee on State and Federal Government)  
 (At the request of the Lieutenant Governor)

### STATE AGENCY INFORMATION SHARING

AN ACT to provide for the sharing of information among state agencies and with private entities; to create and enact a new section to chapter 54-34 of the North Dakota Century Code, relating to the provision and distribution of information by the economic development commission; and to amend and reenact sections 34-05-03, 52-01-03, 57-39.2-23, and 65-04-15 of the North Dakota Century Code, relating to the provision and distribution of information by the commissioner of labor, unemployment compensation bureau of job service North Dakota, the tax commissioner, and the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-05-03 of the North Dakota Century Code is amended and reenacted as follows:

34-05-03. Officials and employers to furnish certain information - Penalty. All public officers and all employers shall furnish to the commissioner of labor such information as ~~he~~ the commissioner may request relating to their respective offices or businesses. The information obtained must be preserved, systemized, and tabulated by the commissioner. Information concerning the business or affairs of any person may not be divulged or made public by the commissioner or anyone in the employ of ~~his~~ the commissioner's office; provided, that the commissioner may provide a list of the names and addresses of employers to other agencies or to a private entity for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act. Any officer, any employer, and any operator or manager of any establishment wherein persons are employed, who fails or refuses to furnish the commissioner with the information ~~asked for by him~~ requested under the provisions of this section, is guilty of a class B misdemeanor. No prosecution may be commenced for a violation of the provisions of this section relating to the furnishing of information until a second blank has been mailed to the defaulting officer or employer and ~~he~~ that person has been given twenty days to complete and return the same.

\* SECTION 2. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be

\* NOTE: Section 52-01-03 was also amended by section 34 of Senate Bill No. 2058, chapter 95.

held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or ~~his~~ claimant's legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of ~~his~~ the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations rule may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must may be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax commissioner. The bureau may provide any state agency or a private entity with the names and addresses of employing units for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

SECTION 3. Joint publication and distribution of information by state agencies. Any state agency may cooperate with any other state agency to jointly publish and distribute information and may arrange to have the joint publication or distribution, or both, coordinated by a private entity. Any state agency may provide information it has collected or developed, including mailing lists, to each other or to any private entity for the purpose of distributing jointly or individually issued publications or other information.

SECTION 4. A new section to chapter 54-34 of the North Dakota Century Code is created and enacted as follows:

Cooperation with other agencies or private entities to jointly publish or mail publications. The economic development commission may cooperate with other state agencies or with a private entity for the purpose of jointly publishing or distributing information or publications as provided in section 3 of this Act.

SECTION 5. AMENDMENT. Section 57-39.2-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge, or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such returns by other state officers, and at ~~his~~ the commissioner's discretion furnish to the tax officials of another state, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed pursuant to this chapter, and in the report of an audit or investigation made with respect thereto, provided only that said information be furnished solely for tax purposes; and the multistate tax commission may make said information available to the tax officials of any other state and the United States for tax purposes.

The commissioner ~~is hereby authorized to may~~ furnish to the workers compensation bureau or to the job insurance division of job service North Dakota upon request of either a list or lists of holders of permits issued pursuant to the provisions of this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such permit holders; provided, that any such list shall be used by the bureau to which it is furnished only for the purpose of administering the duties of such bureau. The commissioner may furnish to any state agency or to a private entity a list of names and addresses of holders of permits issued pursuant to this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information pursuant to section 3 of this Act. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act. The commissioner, or any person having an administrative duty under this chapter, ~~is hereby authorized to may~~ announce that a permit has been revoked.

\* SECTION 6. AMENDMENT. Section 65-04-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's reports confidential - Penalty if employee of bureau divulges information. The information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The workers compensation bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list or lists of employers showing only the names, addresses, and workers compensation bureau file identification numbers of such employers; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties. The bureau may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 3 of this Act. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 3 of this Act.

Approved March 25, 1991  
Filed March 26, 1991

\* NOTE: Section 65-04-15 was also amended by section 36 of Senate Bill No. 2206, chapter 714.

## CHAPTER 569

HOUSE BILL NO. 1107  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### STATE EMPLOYEE EXPENSE CLAIMS

AN ACT to amend and reenact section 54-06-09 of the North Dakota Century Code, relating to the filing of claims for mileage and travel expenses of state officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-09 of the North Dakota Century Code is amended and reenacted as follows:

54-06-09. Mileage and travel expense of state officers and employees. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:

1. The sum of twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle or twenty-seven cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing subdivision, agency, bureau, board, or commission. The sum of thirty-five cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
  - a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
  - b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use. In order to be reimbursed for the chartering of a private aircraft pursuant to subdivision b, the charter agreement must receive prior approval from the director of the office of management and budget who shall take comparable travel costs and the savings of time into account in making his decision. If only one person shall engage in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement must be limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance may be made or paid for such mileage.

2. Except as provided in subsection 1, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
3. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the one-hundred-fifty-mile [241.40-kilometer] restriction imposed by subsection 1 does not apply.

Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee shall file with the director of the office of management and budget employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the office of the budget or specifically requested by such office, verified by his certification employee's department, institution, board, commission, or agency. The statement must be submitted to the office of the budget employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the office of the budget employee's department, institution, board, commission, or agency.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 570

SENATE BILL NO. 2324  
(Senators Satrom, Stenehjelm)  
(Representative DeMers)

### SICK LEAVE BENEFIT PAYMENT

AN ACT to amend and reenact section 54-06-14 of the North Dakota Century Code, relating to partial payment of sick leave benefits upon leaving the employ of the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-14 of the North Dakota Century Code is amended and reenacted as follows:

54-06-14. Annual leave and sick leave for state employees. Annual leave and sick leave must be provided for all persons in the permanent employment of this state who are not employed under a written contract of hire setting forth the terms and conditions of their employment, within the limitations, terms, and provisions of this section. Annual leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of two working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Sick leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of one and one-half working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Annual leave must be compensated for on the basis of full pay for the number of working days' leave credited to the employee. Sick leave must be compensated for on the basis of full pay for absence due to illness on working days during tenure of employment. An employee who accepts a retirement allowance under chapter 39-03-1, 54-52, 45-39-1, or under the alternative retirement program provided by the state board of higher education, with at least ten continuous years of state employment is entitled at the time of retirement to a lump sum payment equal to one-tenth of the pay attributed to the employee's unused sick leave accrued under this section. The pay attributed to the accumulated, unused sick leave must be computed on the basis of the employee's salary or wage at the time the employee retires from employment with leaves the employ of the state and at the rate of one hour of pay for each hour of unused sick leave. The agency, unit, or entity that last employed the employee prior to retirement shall make the lump sum payment from funds appropriated by the legislative assembly to that agency, unit, or entity for salaries and wages. Any state agency, unit, or entity which employs persons subject to this section shall formulate and adopt rules governing the granting of annual leave and sick leave which will effectuate the purpose of this section and best suit the factors of employment of that employing unit. Each employing unit shall file with the office of management and budget a copy of the rules adopted, including any amendments or additions to the rules.

Approved April 16, 1991  
Filed April 18, 1991



## CHAPTER 571

HOUSE BILL NO. 1322  
(Representatives Oban, Wardner, Dalrymple)  
(Senators Maxson, Evanson, Graba)

### **PUBLIC EMPLOYEE PERSONNEL RECORDS**

AN ACT to provide for administration of public employee personnel records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Public employee personnel records - Administration. The official personnel file on each employee is the file maintained under the supervision of the agency head or the agency head's designated representative.

1. No documents that address an employee's character or performance may be placed in the file unless the employee has had the opportunity to read the material. The employee must acknowledge that the employee has read the material by signing the actual copy to be filed, with the understanding that the signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign the copy to be filed, the agency head or the agency head's designated representative shall indicate on the copy that the employee was shown the material, was requested to sign the material to verify that the material had been read, and that the employee refused to sign the copy to be filed. In the presence of the employee and a witness, the agency head or the agency head's designated representative shall sign and date a statement verifying the refusal of the employee to sign the copy to be filed. The material must then be placed in the file.
2. The employee has the right to answer any material filed, and any answer must be attached to the file copy. The employee's answer to material filed may not be used as the basis for any subsequent adverse personnel action. If any material is found to be without merit or unfounded through an established grievance procedure, it must be immediately removed from the file and may not be used in any subsequent actions or proceedings against the employee.
3. The employee or the employee's designated representative must be permitted to examine the employee's official personnel file by appointment during normal business hours.
4. No anonymous letters or materials may be placed in the employee's file.
5. The employee must be permitted to reproduce at the employee's expense any material in the employee's file.

6. An employee may file a grievance regarding nonevaluation material placed in the employee's personnel file. A grievance is limited to an internal agency grievance unless such material is merged into a disciplinary proceeding.
7. This Act does not prohibit administrators from maintaining written notes or records of an employee's performance separate from the personnel file for the purpose of preparing evaluations or possible disciplinary action.
8. Administrators are encouraged to place in the employee's file information of a positive nature, including any such material received from outside competent and responsible sources, indicating special competencies, achievements, performances, or contributions of a professional or civic nature.

SECTION 2. Access. A record of access must be maintained by the employing agency and must be provided to the employee when the employee examines the employee's file.

SECTION 3. Public employee - Definition. As used in this Act, the term "public employee" means any person employed by the state and does not include persons employed by any political subdivision of the state.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 572

HOUSE BILL NO. 1558  
(Representatives Wentz, Larson, DeMers)  
(Senators Lips, Mushik, Robinson)

### CRIME VICTIMS' PROGRAMS

AN ACT to establish a crime victims' account; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Crime victims' account - Administration. The agency designated by the governor to administer the victims' assistance grants under the federal Victims of Crime Act of 1984 [42 U.S.C. 10601 et seq.] shall administer a crime victims' account in the state treasury. The moneys in the account must be distributed through grants to the crime victims' reparations program; private, nonprofit domestic violence or sexual assault programs; and to victim and witness advocacy programs whose primary function is to provide direct services to victims of and witnesses to crimes. The administering agency shall establish procedures for the distribution of grants.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much thereof as may be necessary, to the agency designated to administer the crime victims' account, for the purpose of distributing grants, for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 3. APPROPRIATION - TRANSFER. There is hereby transferred from any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, to the domestic violence prevention fund. There is hereby appropriated out of any moneys in the domestic violence prevention fund, not otherwise appropriated, the sum of \$600,000, or so much thereof as may be necessary, to the state department of health and consolidated laboratories for the purpose of administering grants from that fund for the biennium beginning July 1, 1991, and ending June 30, 1993. The state treasurer shall transfer moneys pursuant to this appropriation as requested by the state health officer.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 573

SENATE BILL NO. 2204  
(Committee on State and Federal Government)  
(At the request of the Centennial Commission)

### CENTENNIAL TREES COMMISSION

AN ACT to provide for a centennial trees commission, to establish duties of the centennial trees commission, to create a trust fund, and to authorize local governments to participate with the centennial trees commission; to amend and reenact section 3 of chapter 27 of the 1989 Session Laws of North Dakota, relating to the effective date of section 2 of chapter 27 of the 1989 Session Laws of North Dakota; to repeal section 1 of chapter 27 of the 1989 Session Laws of North Dakota; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Centennial trees commission. There is hereby created the centennial trees commission which consists of the lieutenant governor and six additional members appointed by the governor for two-year terms. The terms of three members expire on June thirtieth of each year or when successors are duly appointed and qualified. Vacancies must be filled by appointment of the governor.

Duties of commission. To work to achieve the goal of planting one hundred million trees during the decade of the 1990's, the commission may:

1. Expend funds within the limits of legislative appropriations, together with the interest therefrom, which are received from governmental and private entities, or granted for the centennial trees program;
2. Make grants to further the purpose of the program;
3. Select and appoint personnel, establish their salaries, and provide for their expenses, to carry out the policies and directives of the commission;
4. Create advisory committees for special purposes and reimburse the members for travel expenses in the same manner as allowed for state employees; and
5. Cooperate with federal, state, and local agencies and private organizations.

Centennial trees program trust fund. A special fund known as the centennial trees program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. Moneys in the fund may be spent by the centennial trees commission within the limits of

legislative appropriations for defraying the costs associated with the centennial trees program.

Authority for local governments to participate. Any political subdivision of the state may provide financial aid or supportive services to the centennial trees program.

Commission to adopt rules. The centennial trees commission may adopt rules to implement the provisions of this chapter.

Biennial report to the legislative assembly. The centennial trees commission shall present a report each biennium to the legislative assembly which must include information on the activities and the revenues and expenses of the commission.

SECTION 2. AMENDMENT. Section 3 of chapter 27 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 1988, and is ineffective for taxable years beginning after December 31, ~~1998~~ 2000.

SECTION 3. REPEAL. Section 1 of chapter 27 of the 1989 Session Laws of North Dakota is repealed.

SECTION 4. EXPIRATION DATE. Except as provided in section 2 of this Act, this Act is effective through June 30, 2001.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 574

HOUSE BILL NO. 1584  
(Linderman, Thorpe)

### SECRETARY OF STATE FEES AND SERVICE

AN ACT to create and enact a new subsection to section 54-09-04 and a new section to chapter 54-09 of the North Dakota Century Code, relating to fees for services performed by the secretary of state and to service of process upon the secretary when an agent cannot be found; and to amend and reenact subsection 5 of section 54-09-04 of the North Dakota Century Code, relating to fees for searching records and archives of the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

5. For searching records and archives of the state, ~~two~~ five dollars.

SECTION 2. A new subsection to section 54-09-04 of the North Dakota Century Code is created and enacted as follows:

For filing any process, notice, or demand for service, twenty dollars.

SECTION 3. A new section to chapter 54-09 of the North Dakota Century Code is created and enacted as follows:

Service of process on secretary of state if agent not found - Procedure - Time for answering process. If an agent other than the secretary of state has been appointed for receipt of service, but the affidavit of a sheriff or of an adult who is not a party to a proceeding establishes that diligent inquiry has been made and that personal service cannot be accomplished upon any registered agent, officer, or superintending, managing, or general agent of an entity, then the secretary of state may be deemed the agent of the entity for receiving service of process. The party serving process, notice, or demand must provide a copy of the affidavit of a sheriff or of an adult who is not a party to the proceeding that service cannot be accomplished and must file with the secretary of state an original and two copies of the process, notice, or demand, together with the fees required by section 54-09-04. Service on the secretary of state constitutes personal service on the entity. The secretary of state shall immediately forward a copy of the sheriff or other adult's affidavit and of the process, notice, or demand by registered mail addressed to the entity to be served at its registered office or last address on file with the secretary of state. Notwithstanding a shorter period of time specified in the process, notice, or demand, the entity has thirty days after the secretary of state receives the documents to respond to the process, notice, or demand.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 575

SENATE BILL NO. 2069  
(Legislative Council)  
(Interim Legislative Audit and Fiscal Review Committee)

## STATE AGENCY AUDITS

AN ACT to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor; and to provide for a transition period.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

54-10-01. Powers and duties of state auditor. The state auditor shall:

1. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
2. ~~Be vested with the duties, powers, and responsibilities involved in making a complete examination once every two years of the books, records, accounting methods, and internal controls of any and all~~ Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies, including the occupational and or professional boards provided for in title 43 and the state bar board, state board of veterinary medical examiners, and all other professional boards created by law. The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the fair value cost of the audit and other services rendered plus actual costs incurred by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and nongeneral fund moneys. The state auditor shall require any agency in the executive branch of government, which includes an institution of higher education, to pay for a contract for the audit or review of that agency. Except for an audit or review of an occupational or professional board, the state auditor shall execute any contract under this subsection. The governing board of any occupational and or professional board or commission shall provide for an audit once

every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. ~~When~~ If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit such that board or commission. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

3. Prepare annually a report identifying all outstanding bonds and other evidences of indebtedness of the state of North Dakota. The state auditor shall include in the report the principal and accrued interest amounts of each outstanding debt issue. Information that is available in audit reports prepared by private firms may be used when preparing the report. Perform or provide for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and fiscal review committee. A performance audit must include reviewing elements of compliance, economy and efficiency, and program results to determine whether an agency is complying with applicable laws and legislative intent and is managing its resources efficiently, and whether the agency's programs are achieving desired results.
4. Be responsible for the above functions and ~~shall~~ report thereon to the governor and the office of management and budget as prescribed by section 54-06-04 or more often as circumstances may require.
5. Perform such other duties as ~~are or may be~~ prescribed by law.

SECTION 2. TRANSITION PERIOD. An audit of a state agency which includes a period ending before July 1, 1990, must be completed under the laws and rules in effect during that period.

Approved April 17, 1991  
Filed April 18, 1991



## CHAPTER 576

SENATE BILL NO. 2070  
(Legislative Council)  
(Interim Legislative Audit and Fiscal Review Committee)

### STATE AUDITOR FEES AND OPERATING ACCOUNT

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to political subdivision audits and audit fees; and to provide an exemption to the provisions of section 54-44.1-11 regarding cancellation of unexpended appropriation authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by the duly appointed deputy auditors or other authorized agents, shall audit once every two years, except as provided in this section or otherwise by law, the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Vocational education centers.
13. Correction centers.
14. Recreation service districts.

\* NOTE: Section 54-10-14 was also amended by section 1 of House Bill No. 1268, chapter 577.

15. Weed boards.
16. Irrigation districts.

The state auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population, and other political subdivisions subject to the provisions of this section, or otherwise provided by law, with less than fifty thousand dollars of annual receipts. The reports must contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as deemed necessary in addition to the report. The state auditor may charge a political subdivision a fee for the costs of reviewing a financial report.

The governing board of any political subdivision may provide for an audit by a certified public accountant or licensed public accountant and then the state auditor is not required to make the examination provided for in this section. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor by the public accountant performing the audit when the audit report is delivered to the political subdivision. The state auditor may charge the public accountant a fee for the related costs of reviewing the audit report. The governing board of the subdivision may not pay the audit fee until evidence of the filing is furnished. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing boards and officers of the subdivisions disclosed by the audit reports, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, procedures, or illegal actions are corrected and fees for the audits, so resumed, are paid in accordance with this section. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the political subdivision in preparing the audit report. All fees for the audits performed by the state auditor must be paid by the subdivision audited to the state treasurer and credited to the general fund of the state deposited in a state auditor operating account to be used by the state auditor, within the limits of legislative appropriation, for expenses relating to political subdivision audits.

**SECTION 2. EXEMPTION - APPROPRIATION AUTHORITY TRANSFER.** The state auditor appropriation contained in section 1 of chapter 1 of the 1989 Session Laws shall not be subject to the provisions of section 54-44.1-11 and the sum of \$100,000 of state auditor 1989-91 general fund appropriation authority is hereby authorized for transfer to the state auditor operating account. Such moneys shall be transferred during the biennium beginning July 1, 1991, and ending June 30, 1993, at the direction of the state auditor.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 577

HOUSE BILL NO. 1268  
(Representatives Thompson, Whalen, Payne)  
(Senator Satrom)

### POLITICAL SUBDIVISION AUDIT COSTS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to political subdivision audits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by the duly appointed deputy auditors or other authorized agents, shall audit once every two years, except as provided in this section or otherwise by law, the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Vocational education centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.

\* NOTE: Section 54-10-14 was also amended by section 1 of Senate Bill No. 2070, chapter 576.

## 16. Irrigation districts.

The state auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population, and other political subdivisions subject to ~~the provisions of~~ this section, or otherwise provided by law, with less than fifty thousand dollars of annual receipts. The reports must contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as deemed necessary in addition to the report.

The governing board of any political subdivision may provide for an audit by a certified public accountant or licensed public accountant and then the state auditor is not required to make the examination provided for in this section. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor by the public accountant performing the audit when the audit report is delivered to the political subdivision. The governing board of the subdivision may not pay the audit fee until evidence of the filing is furnished, unless the public accountant performing the audit has had a quality control or peer review covering governmental audits of political subdivisions or has completed a work paper review with the state auditor, in which case the governing body of the subdivision may make progress payments to the accountant. If the political subdivision makes progress payments, the governing body of the political subdivision shall retain twenty percent of each payment until evidence is furnished that the audit report has been properly filed with the state auditor. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing boards and officers of the subdivisions disclosed by the audit reports, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, procedures, or illegal actions are corrected and fees for the audits, so resumed, are paid in accordance with this section. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the political subdivision in preparing the audit report. All fees for the audits performed by the state auditor must be paid by the subdivision audited to the state treasurer and credited to the general fund of the state.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 578

HOUSE BILL NO. 1103  
(Committee on Finance and Taxation)  
(At the request of the State Treasurer)

### STATE INVESTMENT INCOME DISPOSITION

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to investment income of the state's colleges and universities; and to amend and reenact sections 6-09-07, 54-11-01, and 54-17-07 of the North Dakota Century Code, relating to investment income of the Bank of North Dakota, duties of the state treasurer with regard to receipts for deposits into the state treasury and allocation of certain investment income, and income on industrial commission deposits and investments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-07 of the North Dakota Century Code is amended and reenacted as follows:

6-09-07. State funds must be deposited in Bank of North Dakota - Income of the Bank. All state funds, and funds of all state penal, educational, and industrial institutions must be deposited in the Bank of North Dakota by the persons having control of such funds or must be deposited in accordance with constitutional and statutory provisions. All income earned by the Bank for its own account on state moneys that are deposited in or invested with the Bank to the credit of the state must be credited to and become a part of the revenues and income of the Bank.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

College and university investment income. All income earned on college and university funds not deposited in the state treasury must be retained by those funds.

SECTION 3. AMENDMENT. Section 54-11-01 of the North Dakota Century Code is amended and reenacted as follows:

54-11-01. Duties of state treasurer. The state treasurer shall:

1. Receive and keep all the moneys belonging to the state not required to be received and kept by some other person.
2. Register the orders or certificates of the office of management and budget delivered to him when moneys are paid or to be paid into the treasury.
3. ~~Beliver to each person paying money into the treasury and to the office of management and budget; a duplicate~~ Prepare a receipt for

each deposit of money into the treasury. The receipt showing must show the amount, the source from which the money accrued, and the funds into which it is paid, such. The receipts to must be numbered in order. Duplicates, if requested, must be delivered to the office of management and budget and the person paying money into the treasury.

4. Pay warrants drawn by the office of management and budget and signed by the state auditor out of the funds upon which they are drawn, and in the order in which they are presented.
5. ~~Repealed by S.L. 1975, ch. 472, § 1.~~
- ~~6.~~ Keep an account of all moneys received and disbursed.
- ~~7.~~ 6. Keep separate accounts of the different funds.
- ~~7.~~ 7. Keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
8. Receive in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor in conformity with law.
9. Redeem warrants drawn by the office of management and budget and signed by the state auditor in conformity with law, if there is money in the treasury appropriated for that purpose.
10. Report to the office of management and budget on the last day of each month the amount disbursed for the redemption of bonds and the payment of warrants during the month, such reports to show:
  - a. The date and number of each bond and warrant;
  - b. The fund out of which each was paid; and
  - c. The balance in cash on hand in the treasury to the credit of each fund.
11. At the request of either house of the legislative assembly, or of any committee thereof, give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.
12. Submit a biennial report to the governor and the office of management and budget as prescribed by section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the state are deposited. It must be certified by the state treasurer and approved by the governor.

13. Authenticate with his official seal all writings and papers issued from his office.
14. Keep a book in which he shall enter all warrants paid, giving the name of the owner and the number and amount of each warrant.
15. Keep and disburse all moneys belonging to the state in the manner provided by law.
16. Keep his books open at all times for the inspection of the governor, the state auditor, the commissioner of banking and financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
17. Unless otherwise specified by law, credit all income earned on the deposit or investment of all state moneys to the state's general fund; provided that this provision does not apply to:
  - a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
  - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
  - c. Income earned on college and university funds not deposited in the state treasury.
18. Perform such other duties as are prescribed by law.

SECTION 4. AMENDMENT. Section 54-17-07 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07. Industries under the industrial commission - Income on deposits and investments. The industrial commission shall operate, manage, control, and govern all utilities, industries, enterprises, and business projects established, owned, undertaken, administered, or operated by the state of North Dakota, except those carried on in penal, charitable, or educational institutions. All income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission must be added to and become a part of such moneys.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 579

SENATE BILL NO. 2301  
(Senators Mushik, Holmberg)  
(Representatives Hokana, Rydell)

### **BICENTENNIAL TRUST FUND**

AN ACT to authorize the centennial commission to transfer funds to the state treasurer for the purpose of establishing a fund to be used to commemorate and celebrate North Dakota's bicentennial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. The centennial commission shall transfer \$10,000 from its special revolving fund to the state treasurer to be placed in a bicentennial trust fund. The principal and interest of this fund must remain intact until transferred to the bicentennial commission on or after January 1, 2089. If no bicentennial commission is in existence on January 1, 2089, the money in the bicentennial trust fund must be transferred to the governor. Upon transfer to the bicentennial commission or the governor, as the case may be, the moneys in the fund may be expended to commemorate and celebrate the bicentennial of the state.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 580

SENATE BILL NO. 2595  
(Senators Freborg, Kelsh)  
(Approved by the Committee on Delayed Bills)

### CHILD SEXUAL ABUSE INVESTIGATION AND PROSECUTION

AN ACT to establish a child sexual abuse investigation and prosecution team; to provide an appropriation; to provide a statement of legislative intent; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Child sexual abuse investigation and prosecution. The child sexual abuse investigation and prosecution team consists of an assistant attorney general, an agent of the state bureau of criminal investigation, and a licensed social worker employed by the department of human services. The attorney general shall appoint an assistant attorney general and an agent of the bureau of criminal investigation to the team and the executive director of the department of human services shall appoint a licensed social worker to the team. On request of any state's attorney, the team shall assist, within the limits of legislative appropriation and available staff resources, with the investigation and prosecution of child sexual abuse cases.

SECTION 2. APPROPRIATION. The sums hereinafter listed, or so much thereof as may be necessary, are hereby appropriated, out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the attorney general for the purpose of employing an assistant attorney general, a bureau of criminal investigation agent, and a clerical employee for the purposes of this Act, and to the department of human services for the purpose of employing a licensed social worker for the purposes of this Act for the period beginning July 1, 1992, and ending June 30, 1993:

AGENCY	GENERAL FUND	FEDERAL FUNDS	TOTAL
Attorney general	\$43,061	\$107,212	\$150,273
Department of human services	<u>11,757</u>	<u>29,364</u>	<u>41,121</u>
Total	<u>\$54,818</u>	<u>\$136,576</u>	<u>\$191,394</u>

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the general fund appropriation is made in conjunction with the availability of federal matching funds for this Act.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 1992.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 581

HOUSE BILL NO. 1156  
(Committee on Judiciary)  
(At the request of the Attorney General)

### ASSETS FORFEITURE FUND

AN ACT to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the assets forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation. There is hereby created a fund to be known as the attorney general assets forfeiture fund. The fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total aggregate amount in the fund may not exceed five hundred thousand dollars and at the end of each fiscal year any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For paying, at the discretion of the attorney general, awards for information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping for law enforcement functions forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state controlled substances board or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of chapter ~~19-03-1~~ any state criminal law or law relating to the control of drug abuse.

\* NOTE: Section 54-12-14 was also amended by section 9 of Senate Bill No. 2073, chapter 600, and by section 2 of Senate Bill No. 2548, chapter 133.

6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of such fund, and shall personally approve, in writing, all requests from the chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of said fund and is accountable to the legislative council, upon request, for the expenditure thereof.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 582

HOUSE BILL NO. 1163  
(Committee on Finance and Taxation)  
(At the request of the Office of Management and Budget)

### **DEPARTMENTAL PAYROLL TRANSFERS**

AN ACT to repeal section 54-14-04.2 of the North Dakota Century Code, relating to the use of an electronic funds transfer system by the office of the budget for payment of departmental payrolls.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-14-04.2 of the North Dakota Century Code is repealed.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 583

HOUSE BILL NO. 1109  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### VOUCHER AND CLAIM APPROVAL

AN ACT to amend and reenact section 54-14-07 of the North Dakota Century Code, relating to standard vouchers for claims against public funds and disapproval of claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-14-07 of the North Dakota Century Code is amended and reenacted as follows:

54-14-07. Office of the budget to make rules set policy - Standard vouchers - Disapproval of claims. In order to ensure that sufficient information is provided to verify claims and determine the exact purpose of expenditures, the office of the budget shall promulgate rules and regulations set policies which it deems necessary for an adequate accounting and shall direct the preparation of standard forms or vouchers upon which claims against any public fund must be submitted. The standard forms or vouchers must be prepared in such a manner so as to require an enumeration and description of services performed; purposes of expenditures; types of items or services purchased; number of days of per diem payments; the capacity in which per diem is claimed; and any other information which is deemed necessary or desirable. In the case of travel expenses; the office of the budget shall specifically provide by rule or regulation for certification and a method whereby adequate verification of travel allowances or expenses can be provided; and to this end it The office of the budget may direct individuals or departments to maintain adequate records which they may be called upon to produce for preaudit or postaudit purposes in order to verify any information submitted upon travel vouchers or verify the correctness and lawfulness of the expenditures. The office of the budget department, institution, board, commission, or agency to which a voucher is submitted shall disapprove all vouchers or expenditures it determines to be in error, unlawful, or in excess of the limits of legislative appropriation.

Approved March 11, 1991  
Filed March 11, 1991

**CHAPTER 584**

SENATE BILL NO. 2168  
(Committee on Appropriations)  
(At the request of the Office of Management and Budget)

**FUND EXPENDITURE AUTHORITY**

AN ACT to create and enact a new section to chapter 54-16 of the North Dakota Century Code, relating to emergency commission authorization for acceptance and expenditure of funds received between legislative sessions; and providing an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-16 of the North Dakota Century Code is created and enacted as follows:

Commission may authorize acceptance and expenditure of moneys between sessions. The emergency commission, upon the advice of the office of management and budget and within the limits of legislative appropriation for approval under this section, may authorize state agencies, institutions, or departments, between legislative sessions, to receive and accept moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys. The emergency commission may authorize the state agency, institution, or department to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

SECTION 2. APPROPRIATION. Under section 1 of this Act, the emergency commission may approve amounts not exceeding in total for all of state government \$10,000,000, which moneys are hereby appropriated for the biennium beginning July 1, 1991, and ending June 30, 1993. The moneys are those not otherwise appropriated and for which approval to receive and expend is requested pursuant to section 1 of this Act. The office of management and budget must report to the budget section at such times as it may meet on the receipt and expenditure of funds approved by this section.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 585

SENATE BILL NO. 2462  
(Senators Mushik, Evanson, Satrom)  
(Representatives DeMers, Price, Oban)

### HOUSING ACQUISITION PROGRAM

AN ACT to create and enact a new section to chapter 54-17 of the North Dakota Century Code, relating to the establishment of a housing acquisition program; and to amend and reenact section 54-17-07.2 of the North Dakota Century Code, relating to definitions with respect to housing acquisition and finance programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-07.2 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.2. Definitions. As used in sections 54-17-07.1 through 54-17-07.7 and section 2 of this Act:

1. "Lenders" means any bank or trust company chartered by the state of North Dakota or any national banking association located in North Dakota, state or federal savings and loan association located in North Dakota, and federal housing administration approved mortgagee or other mortgage banking institutions actively engaged in home mortgage lending in North Dakota approved by the industrial commission.
2. "Multifamily housing facility" means any facility containing five or more residential dwelling units; provided, that at least twenty percent of the units in each facility must be held for occupancy by persons or families of low and moderate income for such period of time as the industrial commission may determine, and may include such related public or private facilities intended for commercial, cultural, recreational, community, or other civic purpose as the commission may approve.
3. "Persons and families of low or moderate income" means persons or families whose financial means are insufficient, taking into account such factors as the industrial commission shall deem relevant, to secure decent, safe, and sanitary housing provided by private industry without the financial assistance afforded by the housing finance programs of the commission.

SECTION 2. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Housing acquisition program. The industrial commission may establish a program or programs to provide housing for persons of low or moderate income, through the acquisition of residential real property and related personal

property or interests therein through purchase, lease, gift, grant, bequest, or otherwise to maintain, repair, improve, sell, or convey leasehold interests in that real and personal property to, or for the benefit of, persons of low or moderate income. Property acquired under this section is subject to property and special assessment taxes in a manner consistent with and equal to other property of equal value within the respective taxing districts where the property is located. Taxes on any property acquired under this section must be paid in a timely manner for any year or pro rata portion of a year by any housing authority or housing acquisition organization holding title to the property.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 586

SENATE BILL NO. 2222  
(Committee on State and Federal Government)  
(At the request of the State Housing Finance Agency)

### HOUSING FINANCE AGENCY MULTIPLE PROGRAMS

AN ACT to amend and reenact section 54-17-07.3 of the North Dakota Century Code, relating to the number of housing finance programs of the state housing finance agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-07.3 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.3. Housing finance programs. Acting in its capacity as a state housing finance agency, the industrial commission is authorized to establish the following housing finance programs:

1. Home mortgage finance program. A program or programs to provide financing of loans made by lenders to persons or families of low and moderate income for the purchase or substantial rehabilitation of owner occupied, single family residential dwelling units, which includes mobile homes and manufactured housing.
2. Mobile home and manufactured housing finance program. A program or programs to provide financing of loans made by lenders to persons or families of low and moderate income to finance the purchase of mobile homes and manufactured housing other than on a real property mortgage basis.
3. Multifamily housing finance program. A program or programs to provide financing directly or indirectly of construction, permanent, and combined construction and permanent mortgage loans (including participations in mortgage loans) for the acquisition, construction, refurbishing, reconstruction, rehabilitation, or improvement of multifamily housing facilities.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 587

HOUSE BILL NO. 1140  
(Committee on Industry, Business and Labor)  
(At the request of the Housing Finance Agency)

### **HOME IMPROVEMENT FINANCE PROGRAM**

AN ACT to create and enact a new subsection to section 54-17-07.3 of the North Dakota Century Code, relating to the creation of a home improvement finance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-17-07.3 of the North Dakota Century Code is created and enacted as follows:

Home improvement finance program. A program or programs to provide full or partial, indirect financing of improvements to existing residential dwelling units.

Approved March 25, 1991  
Filed March 26, 1991

**CHAPTER 588**

HOUSE BILL NO. 1092  
(Committee on Finance and Taxation)  
(At the request of the Housing Finance Agency)

**MORTGAGE LOAN FINANCE PROGRAM**

AN ACT to create and enact a new subsection to section 54-17-07.3 of the North Dakota Century Code, relating to the creation of a mortgage loan finance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-17-07.3 of the North Dakota Century Code is created and enacted as follows:

Mortgage loan financing program. A program or programs to provide for the purchase of mortgage loans originated by lenders on residential real property in addition to such mortgage loans acquired or to be acquired under subsections 1 through 3.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 589

HOUSE BILL NO. 1480  
(Representatives Tollefson, Rydell, Hanson)  
(Senators Tallackson, Keller, Lips)

### **LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM**

AN ACT to create and enact a new subdivision to subsection 1 of section 28-32-01 and a new chapter to title 54 of the North Dakota Century Code, relating to the legislative intent of the lignite research, development, and marketing program; priority projects, processes, and activities under the lignite research, development, and marketing program; and the powers of the industrial commission in carrying out the lignite research, development, and marketing program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

SECTION 2. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Declaration of findings and public purpose. The legislative assembly finds and declares that North Dakota's lignite industry produces approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern great plains region and by producing synthetic natural gas from coal that heats three hundred thousand homes and businesses in eastern states, which is equivalent to over twenty thousand barrels of oil per day. The legislative assembly further finds and declares that North Dakota's lignite industry generates over seventeen thousand direct and indirect jobs for North Dakota, over one billion dollars in annual business volume and over sixty-five million dollars in annual tax revenue. The legislative assembly further finds and declares that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program that promotes economic, efficient, and clean uses of lignite and products derived from lignite in order to maintain and enhance development of North Dakota lignite and its products; preserve and create jobs involved in the production and utilization of North Dakota lignite; ensure economic stability, growth, and opportunity in the lignite industry; and maintain a stable and competitive tax base for our state's lignite industry for the general welfare of North Dakota. The legislative assembly further finds and declares that development of North Dakota's lignite resources must be conducted in an environmentally sound

manner that protects our state's air, water, and soil resources as specified by applicable federal and state law.

**Lignite research council - Compensation.** The industrial commission shall consult with the lignite research council established by executive order in matters of policy affecting the administration of the lignite research fund. Members of the lignite research council may receive reimbursement from the lignite research fund for actual and necessary expenses incurred in the performance of their duties, if authorized by the industrial commission.

**Priority projects, processes, and activities.** In evaluating applications for funding from the lignite research fund for North Dakota's lignite research, development, and marketing program, the industrial commission and lignite research council shall give priority to those projects, processes, or activities that will preserve existing jobs and production, which will create the greatest number of new jobs and most additional lignite production and economic growth potential in coal-producing counties or those counties with recoverable coal reserves, which will attract matching private industry investment equal to at least fifty percent or more of the total cost, and which will result in development and demonstration of a marketable lignite product or products with a high level of probability of rapid commercialization by the year 2000 or before. For marketing applications, priority must be given to those projects, processes, or activities that develop baseline information, implement specific marketing strategies, and otherwise contribute to the effective marketing of lignite and its products by the year 2000 or before. For reclamation applications, priority must be given to those projects, processes, or activities that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mined land to its original or better productivity as soon as possible. Any projects, activities, or processes selected by the commission for funding must achieve the priorities and purposes of the program, must have undergone technical review and be determined to have technical merit, must have generated matching private industry investment, and must have received a favorable lignite research council recommendation.

**Industrial commission powers.** The industrial commission is hereby granted all powers necessary or appropriate to carry out and effectuate the purposes of this chapter, including the power:

1. To make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, and marketing projects, processes, or activities directly related to lignite and products derived from lignite.
2. To make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter, including the authority to contract for the administration of the lignite research, development, and marketing program.
3. To borrow money and issue evidences of indebtedness as provided in this chapter.
4. To receive and accept aid, grants, or contributions of money or other things of value from any source to be held, used, and applied

to carry out the purposes of this chapter, subject to the conditions upon which the aid, grants, or contributions are made, including aid, grants, or contributions from any department, agency, or instrumentality of the United States for any purpose consistent with the provisions of this chapter.

5. To issue and sell evidences of indebtedness in an amount or amounts as the commission may determine, plus costs of issuance, financing, and any evidences of indebtedness funded reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purpose of funding research, development, and marketing projects, processes, or activities directly related to lignite and products derived from lignite.
6. To refund and refinance its evidences of indebtedness from time to time as often as it is advantageous and in the public interest to do so, and to pledge any and all income and revenues derived by the commission under this chapter or from a project, process, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness.

Evidences of indebtedness.

1. Evidences of indebtedness issued by the industrial commission under this chapter are payable solely from:
  - a. Appropriations by the legislative assembly from moneys in the lignite research fund.
  - b. Revenues or income that may be received by the commission from lignite projects, processes, or activities funded under this chapter with the proceeds of the commission's evidences of indebtedness.
  - c. Revenues or income received by the commission under this chapter from any source.
2. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and are not debt of the state or of any officer or agent of the state within the meaning of any statutory or constitutional provision. The evidences of indebtedness must be executed by the manual or facsimile signature of a member or members of the commission and the manual signature of a designated authenticating agent. Any evidences of indebtedness bearing the signature of a member of the commission in office at the date of signing are valid and binding for all purposes notwithstanding that before delivery the person has ceased to be a member of the commission.

Access to commission records. Materials and data submitted to, or made or received by, the commission, to the extent that the materials or data consist of trade secrets, or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the commission or receiving commission services under this chapter, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 590

SENATE BILL NO. 2318  
(Streibel)

### EXPORT TRADING COMPANY PARTICIPATION

AN ACT to amend and reenact subsection 4 of section 6-09-15 and sections 54-18-04 and 54-18-04.2 of the North Dakota Century Code, relating to the power of the Bank of North Dakota to invest funds in an export trading company and the power of the industrial commission to participate with export trading companies; and to repeal section 4-01-19.1 of the North Dakota Century Code, relating to the participation of the department of agriculture's marketing bureau with export trading companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Invest its funds:
  - a. In conformity with policies of the industrial commission.
  - b. ~~In an export trading company organized and doing business in this state through the purchase of shares of stock.~~
  - c. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.

SECTION 2. AMENDMENT. Section 54-18-04 of the North Dakota Century Code is amended and reenacted as follows:

54-18-04. Powers and duties of industrial commission in operating association. To accomplish the purposes of this chapter, the industrial commission shall acquire by purchase, lease, or by exercise of the right of eminent domain, all necessary property or property rights and may:

1. Construct, remodel, or repair all necessary buildings.
2. Purchase, lease, construct, or otherwise acquire warehouses, elevators, flour mills, factories, offices, plants, machinery, equipment, and all other things necessary, incidental, or convenient in the manufacturing and marketing of all kinds of raw and finished farm products within or without the state.
3. Dispose of all kinds of raw and finished farm products.

4. Buy, manufacture, store, mortgage, pledge, sell, exchange, or otherwise acquire or dispose of all kinds of manufactured and raw farm and food products and byproducts.
5. For the purpose of acquiring or disposing of all kinds of manufactured farm and food products and byproducts, establish and operate exchanges, bureaus, markets, and agencies, within or without the state, including foreign countries, on such terms and conditions and under such rules and regulations as the commission may determine.
6. Participate with export trading companies formed pursuant to Public Law No. 97-290 [96 Stat. 1233; 15 U.S.C. 4001 et seq.; 15 U.S.C. 61; 15 U.S.C. 45; 12 U.S.C. 372; 12 U.S.C. 635 a-4; 12 U.S.C. 1043] to accomplish the acquisition and disposal of raw and finished farm products by means of commercial enterprises engaged in distribution, marketing, exporting, importing, and manufacturing of raw and finished farm products. For purposes of this section "participate" means anything that any private individual or corporation may lawfully do in conducting a similar business with an export trading company, not otherwise prohibited by law.

SECTION 3. AMENDMENT. Section 54-18-04.2 of the North Dakota Century Code is amended and reenacted as follows:

54-18-04.2. Confidentiality exemption.

1. The industrial commission may provide for the confidentiality of trade secrets and certain commercial and financial information related to specific business transactions of the North Dakota mill and elevator ~~or any export trading company with which the mill and elevator participates~~, including subsidiaries of the North Dakota mill and elevator.
2. Information may be designated as confidential only when such information would impair the mill and ~~elevator or export trading company's~~ elevator's ability to obtain necessary information in the future or cause substantial harm to their competitive position, or when such information would cause substantial harm to the privacy or competitive position of a business partner of the mill and elevator ~~or export trading company~~.
3. Only information regarding specific business transactions and concerning trade secrets as that term is defined in subsection 4 of section 47-25.1-01, commercial information such as bids, prices for products and commodities, quantities, market strategies, distribution channels, and patterns of competition, or financial information of business partners of the mill and elevator ~~or export trading company~~ may be designated as confidential.
4. Before any information is designated as confidential pursuant to this section, a request by the mill and elevator ~~or export trading company~~ for designation of confidentiality must be made public at least five days before the industrial commission acts to designate information as confidential. Any person may protest the requested designation of confidentiality in writing or orally with the industrial commission, or seek an injunction to prevent the



designation of confidentiality in the district court. The request for confidentiality must state the general nature and type of information to be protected, but need not state the name of any business partner or the specific substance of the information which is the subject of the request.

5. Any information designated as confidential pursuant to this section shall not remain confidential when the transaction is reported to the industrial commission or discussed by the industrial commission at a regular or special meeting, unless the transaction is continuing and disclosure of the information may jeopardize the successful completion of the transaction, or it is information concerning the business partner of the mill and elevator or ~~export trading company~~ and disclosure of information would impair the mill and ~~elevator or export trading company's~~ elevator's ability to obtain necessary information in the future or cause substantial harm to the privacy or competitive position of the business partner.

SECTION 4. REPEAL. Section 4-01-19.1 of the North Dakota Century Code is repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 591

SENATE BILL NO. 2116  
(Committee on Appropriations)  
(At the request of the State Mill and Elevator Association)

### MILL AND ELEVATOR AUDITS

AN ACT to amend and reenact section 54-18-14 of the North Dakota Century Code, relating to the annual audit of the mill and elevator association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-18-14 of the North Dakota Century Code is amended and reenacted as follows:

54-18-14. Annual audit of association. The books, records, accounts, inventories, stocks of merchandise, supplies, equipment, and all affairs of the association must be audited and examined once in each year by the state auditor. The audit must be made as soon as possible after June thirtieth in each year. Said audit and the report thereof must disclose fairly and accurately the actual condition of the association as of June thirtieth of that year. Profits and losses may be computed only on such contracts and commitments, or parts thereof, as have been completed on said date, and no estimates of forecasts may be made as to the probable loss or gain on transactions to be fulfilled after said date. Inventories of grains, supplies, and stocks on hand must be computed at the market price on said date on the basis of cost or market, on a consistent basis, in accordance with generally accepted accounting principles. The report may disclose the actual obligations and commitments of the association on existing unfulfilled contracts, and the consideration and prices fixed in said contracts, if, in the judgment of said state auditor, the same are necessary to a complete audit, but the report constitutes a factual report of existing conditions, and, to the fullest extent possible, all estimates, forecasts, and probabilities must be eliminated therefrom. Copies of such audit report upon completion must be filed with the industrial commission, the manager of the association, with the state auditor, and a consolidated balance sheet and operating statement must be made public.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 592

SENATE BILL NO. 2245  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### DIRECTOR OF INSTITUTIONS FUNCTIONS TRANSFER

AN ACT to amend and reenact sections 4-11-21, 4-22-05, 15-59-05.2, 23-01-02, 23-12-10.2, 25-01-01, 25-01-01.1, subsection 6 of section 25-03.1-43, subdivision m of subsection l of section 28-32-01, sections 37-10-03.5, 37-18.1-01, 39-01-02, subsection 5 of section 39-10-50, sections 44-08-18, 48-02-09, 48-06-01, 48-06-03, 48-06-04, 48-06-06, 48-06-07, 48-08-03, 48-08-05, 48-08-08, 48-11-02, 50-06-01.4, 50-06-06.3, subsection 8 of section 50-25.1-02, section 54-01-11, subdivision j of subsection l of section 54-06-04, sections 54-06-18, 54-21-17.1, 54-21-18, 54-21-19, 54-21-24, 54-21-24.1, 54-21-27, 54-21-28, 54-23.2-01, 54-23.2-08, 54-23.3-01, 54-23.3-03, 54-23.3-05, 54-40-12, 54-56-01, 55-01-02.1, and 55-02-08 of the North Dakota Century Code, relating to the transfer of the director of institutions' functions to the office of management and budget or appropriate agency; and to repeal sections 54-21-06, 54-21-06.1, 54-21-09, 54-21-10, 54-21-11, 54-21-12, 54-21-20, 54-23-01, 54-23-02, 54-23-03, 54-23-04, 54-23-05, 54-23-06, 54-23-07, 54-23-08, 54-23-09, 54-23-11, 54-23-12, 54-23-13, 54-23-14, 54-23-15, 54-23-17, 54-23-18, 54-23-24, 54-23-25, 54-23-26, 54-23-30, 54-23-33, 54-23-36, 54-23-38, 54-23-39, 54-23-40, 54-23-41, 54-23-42, 54-23-43, 54-23-49, 54-23-50, 54-23-51, and 54-23-58 of the North Dakota Century Code, relating to the director of institutions' supervisory control, powers and duties, submission of records and reports, and authorization to acquire property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

4-11-21. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under the provisions of this chapter must be deposited by the commissioner with the state treasurer to be credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations therefrom, upon order of the commissioner, with the approval of the director of institutions office of management and budget.

SECTION 2. AMENDMENT. Section 4-22-05 of the North Dakota Century Code is amended and reenacted as follows:

4-22-05. Employees - Legal services - Offices - State departments to cooperate with committee. The state soil conservation committee may employ an administrative officer and such technical experts and agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon

the attorney general for such legal services as it may require, or may employ its own counsel and legal staff. It may delegate such powers and duties as it may deem proper to its chairman, members, agents, or employees. ~~The director of institutions shall supply suitable office accommodations at the seat of the state government, and shall furnish the necessary supplies and equipment.~~ Upon the request of the committee for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, may assign or detail to the committee, members of the staff or personnel of such agency or institution of learning, and may make such special reports, surveys, or studies as the committee may request.

\* SECTION 3. AMENDMENT. Section 15-59-05.2 of the North Dakota Century Code is amended and reenacted as follows:

15-59-05.2. Interagency cooperative agreements for the provision of educational related services to handicapped students - Report by department of public instruction. The department of public instruction shall cooperatively develop and implement interagency agreements with appropriate public and private agencies, including the ~~director of institutions~~ department of corrections and rehabilitation, the state department of human services, and the state department of health and consolidated laboratories, for purposes of maximizing available state resources in fulfilling the educational related service requirements of Public Law 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended. The department of public instruction shall report to the legislative council interim committee on education the content of such interagency agreements and the progress in achieving the goals and objectives set out therein at such time as the interim committee may direct.

\*\* SECTION 4. AMENDMENT. Section 23-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of fifteen members appointed by the governor in the following manner: Two persons shall be appointed from a list of four submitted by the state hospital association, two persons shall be appointed from a list of four submitted by the state medical association, one person shall be appointed from a list of two submitted by the state dental association, one person shall be appointed from a list of two submitted by the state optometric association, one person shall be appointed from a list of two submitted by the state nurses association, one person shall be appointed from a list of two submitted by the state pharmaceutical association, and there shall be appointed seven persons who are consumers of health care services and not employed in the health care field. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council shall be elected annually. The following persons shall serve in an advisory capacity to the health council: the state health officer, the attorney general, the director of ~~institutions~~ the department of corrections and

\* NOTE: Section 15-59-05.2 was also amended by section 2 of Senate Bill No. 2073, chapter 600.

\*\* NOTE: Section 23-01-02 was also amended by section 1 of House Bill No. 1112, chapter 257.

rehabilitation, the state fire marshal, the executive secretary of the state board of nursing, the executive director of the department of human services, the executive director of the North Dakota Indian affairs commission, and any other persons the governor may designate. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The council shall have as standing committees a health committee and a hospital committee and any other committees the council may find necessary. The health committee consists of one of the representatives of the state medical association, one of the representatives of the state hospital association, the representative of the state dental association, the representative of the state optometric association, the representative of the state nurses association, and two of the health care consumer members. The hospital committee consists of the representatives of the state hospital association, one of the representatives of the state medical association, the representative of the state nurses association, and two of the health care consumer members. The members of these committees shall be selected by the chairman of the health council from its own membership. The chairman shall have the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. The per diem and expenses shall be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

**SECTION 5. AMENDMENT.** Section 23-12-10.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-12-10.2. **Complaints and enforcement.** The state department of health and consolidated laboratories is designated to receive reports or complaints from any person regarding violations of sections 23-12-09 through 23-12-11. State agencies with statutory jurisdiction over places of public assembly may enforce sections 23-12-09 through 23-12-11. These agencies include the fire marshal department, state department of health and consolidated laboratories, department of human services, and ~~director of institutions~~ office of management and budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished, and may amend their administrative rules to ensure compliance with sections 23-12-09 through 23-12-11.

Authorities other than state agencies may conduct inspections and report violations to state agencies, or enforce smoking policies, rules, or ordinances more stringent than those contained in sections 23-12-09 through 23-12-11.

**SECTION 6. AMENDMENT.** Section 25-01-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01. **Definitions.** In this title, unless the context or subject matter otherwise requires:

1. "Defective delinquent" means an incompetent mentally deficient person over eighteen years of age who has been found, in accordance with the procedures established in chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such as to present a probable peril to the life, person, or property of others, or who has given substantial evidence of continuing propensity for such behavior.
2. ~~"Director" means the director of institutions.~~
3. "Licensed physician" means an individual licensed under the laws of this state to practice medicine and also means a medical officer of the government of the United States while in this state in the performance of his the physician's official duties.
4. ~~3.~~ "Mentally deficient person" means any person, minor or adult other than a mentally ill person, who is so mentally defective as to be incapable of managing himself and his that person's affairs and to require supervision, control, and care for his that person's own or the public welfare.
5. ~~4.~~ "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his the individual's mental health.
6. ~~5.~~ "School for the blind" means the North Dakota school for the blind.
7. ~~6.~~ "School for the deaf" means the school for the deaf of North Dakota.
8. ~~7.~~ "State hospital" means the state hospital for the mentally ill.
9. ~~8.~~ "Superintendent" means the superintendent of the state hospital, of the developmental center at Grafton, of the school for the blind, or of the school for the deaf, as the case may be.
10. ~~9.~~ "Supervising officer" means the executive director of the department of human services, or the ~~director of institutions~~ superintendent of public instruction, as the case may be.

\* SECTION 7. AMENDMENT. Section 25-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-01-01.1. State council on developmental disabilities. There must be maintained in the office of the governor a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. North Dakota department of human services.
3. State department of health and consolidated laboratories.
4. Developmental center at Grafton.

\* NOTE: Section 25-01-01.1 was also amended by section 1 of Senate Bill No. 2237, chapter 508.

5. Job service North Dakota.

~~6. Director of institutions.~~

The council shall have consumer representation in conformity with federal regulations regarding developmental disabilities. All members of the council must be appointed by the governor from the list of designees provided by agency heads pursuant to this section. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings must be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council constitutes a quorum and may act upon any matter coming before the council. Members of the council are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities, provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution, or organization, and establish a committee on professional standards and certification which will develop rules for the certification of developmental disability professionals. The council, with the approval of the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of developmentally disabled persons in North Dakota, and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

\* SECTION 8. AMENDMENT. Subsection 6 of section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

6. The ~~director of institutions~~ department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.

\*\* SECTION 9. AMENDMENT. Subdivision m of subsection 1 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

m. The ~~director of institutions~~ department of corrections and rehabilitation.

SECTION 10. AMENDMENT. Section 37-10-03.5 of the North Dakota Century Code is amended and reenacted as follows:

37-10-03.5. National guard facilities - Maintenance and repair board. The adjutant general, ~~the director of institutions~~, and a member of the governing body of a political subdivision nominated annually by the adjutant general and ~~the director of institutions~~ from the governing bodies of those political subdivisions which contribute to the maintenance and repair of national guard facilities, shall be the armory maintenance and repair board. The board shall meet annually and determine which national guard armories are

\* NOTE: Section 25-03.1-43 was also amended by section 3 of Senate Bill No. 2372, chapter 293.

\*\* NOTE: Subsection 1 of section 28-32-01 was also amended by section 5 of Senate Bill No. 2054, chapter 640, and by section 33 of Senate Bill No. 2058, chapter 95.

in need of maintenance or repair. The board shall determine the priority of maintenance or repairs for each national guard armory. The board shall determine the contribution from the national guard and each political subdivision toward maintenance or repair of individual armories. The national guard shall contribute up to fifty percent of the maintenance and repair costs determined necessary by the board as funds become available within the limits of legislative appropriations.

**SECTION 11. AMENDMENT.** Section 37-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-18.1-01. Administrative committee on veterans' affairs - Membership - Appointment.** There is hereby created an administrative committee on veterans' affairs, which, for purposes of this chapter, must hereinafter be referred to as the committee. The committee must consist of four ex officio nonvoting members and fifteen voting members. The adjutant general, the center director of the veterans' administration, and the executive director of job service North Dakota, ~~and the director of institutions~~ are the ex officio nonvoting members who shall serve in an advisory capacity to the committee. On or before June 20, 1971, the American legion, the veterans of foreign wars, the disabled American veterans, the veterans of World War II, Korea, and Vietnam, (amvets), and Vietnam veterans' of America, incorporated, shall each prepare a list containing the names of six persons qualifying as veterans under the provisions of section 37-01-40, for appointment as voting members of the committee. On or before July 1, 1971, the governor shall select fifteen nominees, three from each list, five of whom must be appointed to a term of three years, five of whom must be appointed to a term of two years, and five of whom must be appointed to a term of one year, or until their successors are appointed and qualified. On or before the twentieth day of June in each year, beginning in the year 1972, each of the above-listed nominating organizations shall submit a list containing the names of two persons who qualify as veterans under the provisions of section 37-01-40, to the governor for appointment or reappointment as voting members of the committee. On or before the first day of July in each year, beginning in the year 1972, the governor shall select one nominee from each list, a total of five nominees, to fill expiring terms of voting members of the committee. Each such appointment must be for a term of three years, or until a successor is appointed and qualified. All terms begin on the first day of July and end on the thirtieth day of June in the year specified. In case of the inability or failure of any voting member of the committee to serve, the governor shall appoint another member from a list of two persons qualifying as veterans under the provisions of section 37-01-40, submitted by the nominating organization represented by the member who was unable or failed to serve. Such appointments must be made for the remainder of the unexpired term.

**\* SECTION 12. AMENDMENT.** Section 39-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty.** All motor vehicles owned and operated by the state, except the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required

**\* NOTE:** Section 39-01-02 was also amended by section 1 of House Bill No. 1167, chapter 394, and by section 18 of Senate Bill No. 2001, chapter 28.



height. The color of the lettering must be in clear and sharp contrast to the background. The state highway patrol and all peace officers of this state shall enforce this section. The state auditor, in the course of spot checking or verifying the inventory of any state agency, shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section that comes to the auditor's attention. The above requirements do not apply to vehicles operated by the attorney general's office, the bureau of criminal investigation, or the highway patrol, vehicles used for drivers education at state institutions, vehicles used principally in juvenile, parole, and placement service, selected cars or vehicles of the state penitentiary approved by the director of institutions department of corrections and rehabilitation, vehicles owned and operated by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; or to any truck owned by any state agency. A passenger motor vehicle bearing official plates must be in compliance with this section. The administrator of any state agency who uses or authorizes the use of a motor vehicle which is not marked as required by this section is guilty of a class B misdemeanor.

SECTION 13. AMENDMENT. Subsection 5 of section 39-10-50 of the North Dakota Century Code is amended and reenacted as follows:

5. The state highway department, with respect to streets, roadways, and parking areas of any state charitable or penal institution and on the state capitol grounds, may authorize the purchase and placement by the director of institutions supervisory agency of official traffic-control devices prohibiting or restricting the stopping, standing, or parking of vehicles. The placement of signs pursuant to this section must be done when, in the department's opinion, the stopping, standing, or parking is dangerous or would unduly interfere with the free movement of traffic, especially the free flow of traffic required for proper fire protection. No person may stop, stand, or park any vehicle in violation of the restriction indicated by any official traffic-control device. Any registered owner must be presumed to have been the operator of a vehicle that is parked in violation of any official traffic-control device prohibiting or restricting the stopping, standing, or parking of vehicles on any highway, state charitable or penal institution property, or on the state capitol grounds. This presumption may be rebutted by a showing of clear and convincing evidence to the contrary. However, no traffic citation may be issued for a violation of this subsection occurring on the state capitol grounds during a legislative session, except that a written warning must be placed on any vehicle for such a violation.

SECTION 14. AMENDMENT. Section 44-08-18 of the North Dakota Century Code is amended and reenacted as follows:

44-08-18. Officials and employees of agencies located in capitol building responsible for keys issued to them - Return upon termination of employment - Agency head responsibility. Every elected and appointed state official and all state employees employed by or administering any agency, department, board, commission, or other governmental organization with offices located in the state capitol building shall be responsible for the

safekeeping and return of keys allowing entrance to any of such offices or to the capitol building proper which may have been issued to them by the director of institutions office of management and budget. Each official or employee shall, upon or prior to termination of employment in the state capitol, return any and all keys which may have been issued to ~~him~~ the official or employee by the director of institutions office of management and budget or by the legislative council to the person in charge of such keys in the office or department in which ~~he~~ the official or employee was employed. The person in charge, or ~~his~~ the person's designee, shall see to the return of the keys to the director of institutions office of management and budget in a manner provided by rules and regulations which shall be promulgated by the director of institutions office of management and budget. Failure to return a key shall be handled as provided in section 54-06-15.

SECTION 15. AMENDMENT. Section 48-02-09 of the North Dakota Century Code is amended and reenacted as follows:

48-02-09. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or improvement, or for the doing of any work, shall be drawn from the state treasury in advance of the work done or of materials furnished. The same shall be drawn only upon proper estimates thereof approved by the director of institutions supervising agency or the board of higher education, whichever is the governing body of the institution for which the building is being erected. No portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for any purpose with respect to such construction or improvement shall be drawn or used for any other purpose until the construction or improvement for which such appropriation was made is fully completed and paid for.

SECTION 16. AMENDMENT. Section 48-06-01 of the North Dakota Century Code is amended and reenacted as follows:

48-06-01. Establishment - Rules and regulations. The director of institutions the office of management and budget shall maintain and operate a central mailing bureau in the state capitol. The director shall prescribe such reasonable rules and regulations as may be necessary for the prompt and efficient dispatch of all mail.

SECTION 17. AMENDMENT. Section 48-06-03 of the North Dakota Century Code is amended and reenacted as follows:

48-06-03. Departments exempt from using central mailing bureau. The director of institutions the office of management and budget may exempt any department where it is determined that it would not be practical or economical for it to use said central mailing bureau, because of the unusual weight, kind, or volume of mail dispatched by the department.

SECTION 18. AMENDMENT. Section 48-06-04 of the North Dakota Century Code is amended and reenacted as follows:

48-06-04. Purchasing supplies - Employing mail clerks - Director of institutions Office of management and budget. The director of institutions the office of management and budget shall provide a suitable room and shall employ a mailing clerk and an assistant mailing clerk, if necessary. The director also shall purchase postage meter machines and such other equipment,

materials, and supplies as are necessary for the purpose of carrying out the provisions of this chapter.

SECTION 19. AMENDMENT. Section 48-06-06 of the North Dakota Century Code is amended and reenacted as follows:

48-06-06. ~~Director of institutions~~ Office of management and budget postage revolving fund. There shall be maintained in the office of the state treasurer a ~~"director of institutions an "office of management and budget postage revolving fund"~~ in the basic sum of thirty thousand dollars to provide funds for the advance payment of postage. The director of ~~institutions the office of management and budget~~ may draw upon said fund for the advance payment of postage for the use of the central mailing bureau, and all collections from the several offices, departments, and agencies, for postage used by the same, are hereby appropriated and shall be paid into said fund. The provisions of section 54-27-10 shall not apply to said fund nor shall any part of said fund revert at the expiration of any biennium.

SECTION 20. AMENDMENT. Section 48-06-07 of the North Dakota Century Code is amended and reenacted as follows:

48-06-07. Voucher for postage used - Presented to departments by mailing clerk. The mailing clerk or such other person as may be designated by the director of ~~institutions the office of management and budget~~ under the direction of said director shall keep an accurate and complete record of all postage used by each officer, department, or agency, for mail dispatched through said central mailing bureau and shall present monthly or oftener to each such officer, department, or agency, a bill or voucher in the form prescribed by law, for the amount of postage used. After the same has been approved by the office of the budget, it shall be credited to the postal revolving fund of the ~~director of institutions office of management and budget~~ out of the postage appropriation of said officer, department, or agency.

SECTION 21. AMENDMENT. Section 48-08-03 of the North Dakota Century Code is amended and reenacted as follows:

48-08-03. Press representatives' room in state capitol. The director of ~~institutions the office of management and budget~~ shall set aside a room in the state capitol for the exclusive use of accredited representatives of daily and other newspapers and full time correspondents of accredited press associations, and shall place the statehouse correspondent of the Associated Press in charge of such press room.

SECTION 22. AMENDMENT. Section 48-08-05 of the North Dakota Century Code is amended and reenacted as follows:

48-08-05. Federal agencies charged for light, heat, and janitor service. The director of ~~institutions the office of management and budget~~ shall fix and determine a fair and reasonable monthly charge for light, heat, and janitor service to be paid by each federal agency located and transacting business in the capitol.

SECTION 23. AMENDMENT. Section 48-08-08 of the North Dakota Century Code is amended and reenacted as follows:

48-08-08. State, county, local municipal buildings - Space for disaster activities. The director of ~~institutions~~ the office of management and budget and any other group, board or commission having control of the use of any state, county, or local municipal buildings are authorized to provide space for emergency operating centers and disaster offices in such buildings.

SECTION 24. AMENDMENT. Section 48-11-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-11-02. Duties and responsibilities. The capitol arts and historic preservation advisory committee shall advise the director of ~~institutions~~ the office of management and budget, the capitol grounds planning commission, and the legislative council on matters relating to the physical and aesthetic features of the interior of all buildings on the capitol grounds. The committee shall meet at the call of the chairman and must be called in whenever major interior changes, including new construction, remodeling, or renovation of any kind are proposed or considered for the buildings or facilities on the capitol grounds. The committee shall also be consulted prior to the purchase or installation of furniture or fixtures in public areas of the capitol and other buildings on the capitol grounds.

\* SECTION 25. AMENDMENT. Section 50-06-01.4 of the North Dakota Century Code is amended and reenacted as follows:

50-06-01.4. Structure of the department. The department includes the state hospital, the governor's council on human resources, the regional human service centers, a vocational rehabilitation unit, and other units or offices and administrative and fiscal support services as the executive director determines necessary. The department must be structured to promote efficient and effective operations and, consistent with fulfilling its prescribed statutory duties, shall act as the official agency of the state in the discharge of the following functions not otherwise by law made the responsibility of another state agency:

1. Administration of programs for children and families, including adoption services and the licensure of child-placing agencies, foster care services and the licensure of foster care arrangements, child protection services, state youth authority, licensure of day care homes and facilities, services to unmarried parents, refugee services, in-home community-based services, and administration of the interstate compacts on the placement of children and juveniles.
2. Administration of programs for persons with developmental disabilities, including licensure of facilities and services, and the design and implementation of a community-based service system for persons in need of habilitation.
3. Administration of aging service programs, including nutrition, transportation, advocacy, social, ombudsman, recreation, and related services funded under the Older Americans Act of 1965 [42 U.S.C. 3001, et seq.], home and community-based services, licensure of adult family care homes, and the fund matching program for city or county tax levies for senior citizen activities and services.
4. Administration of mental health programs, including planning and implementing preventive, consultative, diagnostic, treatment, and

\* NOTE: Section 50-06-01.4 was also amended by section 3 of Senate Bill No. 2237, chapter 508.

rehabilitative services for persons with mental or emotional disorders and psychiatric conditions.

5. Administration of programs for crippled children, including the provision of services and assistance to crippled children and their families, and the development and operation of clinics for the identification, screening, referral, and treatment of crippled children.
6. Administration of alcohol and drug abuse programs, including establishing quality assurance standards for the licensure of programs, services, and facilities, planning and coordinating a system of prevention, intervention, and treatment services, providing policy leadership in cooperation with other public and private agencies, and disseminating information to local service providers and the general public.
7. Administration of economic assistance programs, including aid to families with dependent children, food stamps, fuel assistance, child support enforcement, refugee assistance, work experience, work incentive, and quality control.
8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, the licensure of basic care facilities, utilization control, and claims processing.

The executive director shall consult with and maintain a close working relationship with the state department of health and consolidated laboratories; with the ~~director of institutions~~ department of corrections and rehabilitation and the superintendents of the school for the deaf and the school for the blind to develop programs for developmentally disabled persons; and with the superintendent of public instruction to maximize the use of resource persons in regional human service centers in the provision of special education services. The executive director shall also maintain a close liaison with county social service agencies.

SECTION 26. AMENDMENT. Section 50-06-06.3 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.3. Facility staff training. It is the intent of the legislative assembly that the department of human services design and implement a facility staff training system in cooperation with ~~the director of institutions~~ and the board of higher education to assure adequate and appropriate staff development and training for the providers of community-based care on behalf of developmentally disabled persons.

SECTION 27. AMENDMENT. Subsection 8 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

8. "State child protection team" means a multidisciplinary team consisting of the designee of the department and, where possible of a physician, a representative of a child-placing agency, a representative of the state department of health and consolidated laboratories, a representative of the office of the attorney general, a representative of the department of public instruction, a representative of the ~~director of institutions~~ department of

corrections and rehabilitation, one or more representatives of the lay community, and, as an ad hoc member, the designee of the chief executive official of any institution named in a report of institutional abuse or neglect. All team members, at the time of their selection and thereafter, must be staff members of the public or private agency which they represent, or shall serve without remuneration. In no event may an attorney member of the child protection team be appointed to represent the child or the parents at any subsequent court proceeding nor may the child protection team be composed of fewer than three persons.

SECTION 28. AMENDMENT. Section 54-01-11 of the North Dakota Century Code is amended and reenacted as follows:

54-01-11. Who has charge of property ceded by United States to state. When any military reservation or Indian school reservation is ceded to the state of North Dakota by the United States, the director of institutions the office of management and budget shall take charge of and care for the property until otherwise provided by law. The governor shall receipt to the United States for any personal property transferred to the state.

SECTION 29. AMENDMENT. Subdivision j of subsection 1 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

j. Director of institutions Department of corrections and rehabilitation.

SECTION 30. AMENDMENT. Section 54-06-18 of the North Dakota Century Code is amended and reenacted as follows:

54-06-18. Director to authorize postage meters. No state agency, department, or institution may obtain or use a postage meter unless authorized to do so by the director of institutions the office of management and budget. All state agencies, departments, and institutions which obtain or use a postage meter prior to July 1, 1975, shall apply to the director for such authorization within one month after July 1, 1975. Each state agency, department, or institution which is authorized by the director to obtain or use a postage meter shall maintain such records as the director may require and shall allow the director to inspect such records upon request. The director of institutions office of management and budget shall keep in his office a record of the identification numbers of all postage meters which his office has authorized for usage.

SECTION 31. AMENDMENT. Section 54-21-17.1 of the North Dakota Century Code is amended and reenacted as follows:

54-21-17.1. Director to secure interior of capitol building - Issuance and return of keys. The director of institutions the office of management and budget shall see to the security of the state capitol building, and shall have control over the issuance and return of keys allowing entry to the building proper, or any door located therein. Keys to doors in the legislative wing must be issued and controlled by the legislative council when so requested by the director of institutions office of management and budget. The director of institutions office of management and budget shall promulgate rules and regulations regarding the manner in which keys are to be

issued and returned, including the procedure for receiving and recording the payment of fees in lieu of return of keys provided in section 54-06-15.

SECTION 32. AMENDMENT. Section 54-21-18 of the North Dakota Century Code is amended and reenacted as follows:

54-21-18. Custody of office building - Considered part of capitol building - Director has control of public property. The director of ~~institutions~~ the office of management and budget shall control, manage, and maintain the state office building. The building must be considered a part of the state capitol building within the meaning of statutes relating to the custody, maintenance, and control of the state capitol building and grounds, and within the meaning of statutes requiring state departments or agencies to maintain their offices in the state capitol building.

Except as otherwise provided by law, the director shall have charge and control of the executive mansion, the capitol, and the park and public grounds connected therewith.

SECTION 33. AMENDMENT. Section 54-21-19 of the North Dakota Century Code is amended and reenacted as follows:

54-21-19. Director to furnish supplies and maintain capitol, state offices, and executive mansion - Authority to charge for services. The director of ~~institutions~~ the office of management and budget shall provide all necessary fuel, electricity, insurance, janitorial, and other services necessary to maintain the state offices on the capitol grounds as well as all necessary furniture, fuel, electricity, express, freight, drayage, and all other necessary supplies for the executive mansion and the capitol grounds, and shall make all necessary repairs. The purchases must be in accordance with chapter 54-44.4. The director shall charge an amount equal to the fair value of the office space and other services rendered to all departments that receive and expend moneys from other than the general fund, except that for good cause the amounts charged may be waived by the director for a one-year period of time with the waiver subject to further annual renewals after proper application has been filed with the director.

SECTION 34. AMENDMENT. Section 54-21-24 of the North Dakota Century Code is amended and reenacted as follows:

54-21-24. Additional office space may be obtained outside state capitol. In the event that office space in the state capitol building becomes insufficient to accommodate the various state departments, agencies, and boards, the director of ~~institutions~~ the office of management and budget may contract for and obtain such additional office space outside the state capitol in the city of Bismarck or in the Bismarck area as is necessary in order to provide accommodations for all state departments, agencies, and boards. When office space is obtained in this manner, any department, agency, or board which occupies such office space must be deemed to be located at the state capitol for purposes of statutes which require that a department, agency, or board must be maintained at the state capitol, and the director shall charge an amount equal to the fair value of the office space and other services rendered to all departments which receive and expend moneys from other than the general fund, except that for good cause the amounts charged may be waived by the director for a one-year period of time with such waiver being subject to further annual renewals after proper application has been filed with the director.

SECTION 35. AMENDMENT. Section 54-21-24.1 of the North Dakota Century Code is amended and reenacted as follows:

54-21-24.1. Lease of additional space by state agencies, departments, offices, officers, boards, and institutions. No lease or rental agreement or renewal of such lease or rental agreement for the lease or rental of buildings or portions of buildings for use by the state may be entered into by state agencies, departments, offices, officers, boards, and institutions, other than institutions under the board of higher education, the adjutant general and department of transportation office and storage space for field engineering and maintenance crews, unless approved by the director of ~~institutions~~ the office of management and budget and unless the attorney general has determined the legal sufficiency of such lease or rental agreement. To assure economy, efficiency, and cooperation between the state and its political subdivisions, and to limit the number of locations of state offices for the convenience of persons traveling to such offices, the director shall promulgate rules and regulations governing the lease or rental of additional buildings or portions thereof by such state agencies, departments, offices, officers, boards, and institutions other than those under the board of higher education, the adjutant general and department of transportation office and storage space for field engineering and maintenance crews.

SECTION 36. AMENDMENT. Section 54-21-27 of the North Dakota Century Code is amended and reenacted as follows:

54-21-27. Removal or sale of unsafe public building - Procedure. The superintendent of the institution, the warden of the institution, the commanding general of the national guard, or the head of an agency, department, bureau, board, or commission, as the case may be, having the responsibility of supervising and maintaining a public building belonging to the state of North Dakota, may sell or remove such building whenever it is found to be obsolete, a fire hazard, in unsafe condition so as to constitute a hazard to life or limb, and is of no future use to the state where it is located, by obtaining the written approval of the state director of ~~institutions~~ the office of management and budget if under his supervision or the head of the department having supervision and the state fire marshal.

Economics shall dictate whether or not the sale or removal shall be by advertising for public bids and awarding same to the lowest responsible bidder. If the building is to be destroyed, every effort must be made to salvage and store any material which will be beneficial to the state, or which will have a salable value.

SECTION 37. AMENDMENT. Section 54-21-28 of the North Dakota Century Code is amended and reenacted as follows:

54-21-28. Space utilization studies - Office space allocation. The director of ~~institutions~~ the office of management and budget shall:

1. Conduct a periodic comprehensive space utilization study of all executive branch staff located within the facilities on the capitol grounds.
2. Develop a space allocation and design policy which will consider space equalization and maximize the effective use of public facilities in a cost-effective manner.



3. Allocate and assign office space, based upon space utilization studies and the established policies, guidelines, standards, and procedures, to all executive branch staff housed and working in facilities on the capitol grounds.
4. Include in developing standards and criteria to be used in making space allocations, considerations regarding equipment; work stations; private offices; conference rooms; reception areas; vaults; necessary arrangements of dividers, doors, and walls to increase adequate air circulation; telephones; lighting; and heating in the utilization of available space.
5. Be consulted, and the director's approval obtained, before any change is made within any assigned and allocated space, and before any structural alteration is made.

SECTION 38. AMENDMENT. Section 54-23.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-01. Definitions. Wherever the word "director" is hereinafter used, it shall mean the director of institutions the office of management and budget. The word "system" hereinafter used shall mean the state radio broadcasting system.

SECTION 39. AMENDMENT. Section 54-23.2-08 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-08. Payment for law enforcement system. Each county shall pay the director ~~of institutions~~ for approximately fifty percent of the cost of the law enforcement telecommunications system, with charges to begin accruing on the first day the system becomes operational. Payments must be made on the basis of the following schedule of charges:

1. Counties having a population of less than five thousand shall pay thirty dollars per month.
2. Counties having a population of five thousand or more but less than ten thousand shall pay sixty dollars per month.
3. Counties having a population of ten thousand or more but less than fifteen thousand shall pay ninety dollars per month.
4. Counties having a population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred twenty dollars per month.
5. Counties having a population of twenty-five thousand or more shall pay one hundred sixty dollars per month.

Other law enforcement agencies may participate in the law enforcement telecommunications system upon payment for their portion of this service at actual cost. The director ~~of institutions~~ may adjust payments for the law enforcement system. Adjustments to the rates to reflect changes in economic conditions and the general economy become effective on each July first following the review. Whenever the director considers an adjustment, the director shall consult with representatives of state and local units of government. The director may contract with political subdivisions for the

purpose of providing assistance to those political subdivisions in providing services authorized by chapter 57-40.6. The director shall deposit all revenue obtained under this chapter with the state treasurer for deposit in the state radio broadcasting system operating account. The state radio broadcasting system operating account must be expended pursuant to legislative appropriation for the operation and maintenance of the system.

\* SECTION 40. AMENDMENT. Section 54-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-01. Department of corrections and rehabilitation - Creation - Duties - Programs. There is hereby created a department of corrections and rehabilitation in the office of that is responsible to the director of institutions governor. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary- state farm or any of its affiliated facilities, parole and probation for adult offenders, state industrial school, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

SECTION 41. AMENDMENT. Section 54-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-03. Director - Appointment - Qualifications - Compensation. The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who must be appointed by the director of institutions governor. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five years. The salary of the director will be set by the director of institutions governor within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division for the position.

SECTION 42. AMENDMENT. Section 54-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-05. Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the director of institutions governor may appoint a director of the division of juvenile services, a director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed, shall meet qualifications as established for the classified positions under the central personnel classification system. The division directors may be removed by the director of the department, with the approval of the director of institutions governor, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the director of the division, subject to the approval of the

\* NOTE: Section 54-23.3-01 was also amended by section 22 of House Bill No. 1201, chapter 116.

director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

SECTION 43. AMENDMENT. Section 54-40-12 of the North Dakota Century Code is amended and reenacted as follows:

54-40-12. Joint agreements for heat from a central heating source. Any political subdivision, nonprofit hospital, or nursing home of this state, through its governing body, may enter into an agreement with any state agency or institution to furnish or receive heat from a central heating source. The director of ~~institutions~~ the office of management and budget or the any supervisory state health officer agency must be the contracting party in an agreement involving a state institution under the director's or health officer's control. Political subdivisions, nonprofit hospitals, nursing homes, and state agencies and institutions are encouraged to enter into agreements pursuant to this section.

\* SECTION 44. AMENDMENT. Section 54-56-01 of the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of ~~institutions~~ the department of corrections and rehabilitation or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget or a designee of the director of the office of management and budget, the director of vocational education, the chairperson of the governor's committee on children and youth, the executive director of the Indian affairs commission, and a designee of the chief justice. The governor or the governor's designee shall act as chairperson.

SECTION 45. AMENDMENT. Section 55-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-01-02.1. Board to have jurisdiction over heritage center. The state historical board shall have jurisdiction over the administration and operations of the North Dakota heritage center building. The director of ~~institutions~~ the office of management and budget shall be responsible for maintenance of the heritage center building. The state historical board shall be responsible for the maintenance of the board's collections displayed and stored at the heritage center, and shall provide, or arrange, for the security of those collections.

SECTION 46. AMENDMENT. Section 55-02-08 of the North Dakota Century Code is amended and reenacted as follows:

55-02-08. Custody and control of former executive mansion - Maintenance responsibility. The custody and control of the former executive mansion located at 320 Avenue B East in the city of Bismarck, North Dakota, with the legal description of lots 3 and 4, Block 11, Northern Pacific Addition to the city of Bismarck, is ~~hereby transferred from the director of~~

\* NOTE: Section 54-56-01 was also amended by section 1 of Senate Bill No. 2512, chapter 636.

~~institutions to the responsibility of the state historical board. The maintenance responsibility of the former executive mansion shall continue in the director of institutions, subject to the direction of the superintendent of the state historical board.~~

SECTION 47. REPEAL. Sections 54-21-06, 54-21-06.1, 54-21-09, 54-21-10, 54-21-11, 54-21-12, 54-21-20, 54-23-01, 54-23-02, 54-23-03, 54-23-04, 54-23-05, 54-23-06, 54-23-07, 54-23-08, 54-23-09, 54-23-11, 54-23-12, 54-23-13, 54-23-14, 54-23-15, 54-23-17, 54-23-18, 54-23-24, 54-23-25, 54-23-26, 54-23-30, 54-23-33, 54-23-36, 54-23-38, 54-23-39, 54-23-40, 54-23-41, 54-23-42, 54-23-43, 54-23-49, 54-23-50, 54-23-51, and 54-23-58 of the North Dakota Century Code are repealed.

Approved April 3, 1991

Filed April 4, 1991

## CHAPTER 593

SENATE BILL NO. 2076  
(Legislative Council)  
(Interim Political Subdivisions Committee)

## STATE BUILDING CODE

AN ACT to amend and reenact section 54-21.3-03 of the North Dakota Century Code, relating to the state building code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-21.3-03 of the North Dakota Century Code is amended and reenacted as follows:

54-21.3-03. State building code - Amendments.

1. The state building code consists of the ~~1985~~ most recently published Uniform Building Code with any existing supplements including the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:

Section 504(f). LPG Appliances.

Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with national fire protection association pamphlets 54 and 58, (b) automatically controlled appliances are equipped with safety shutoff devices of the complete shutoff type, and (c) gas piping has been pressure tested and proven to be gastight.

This code must be implemented by and may be amended by rules adopted by the director of the office of management and budget under chapter 28-32.

2. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
3. The state building code may be amended by cities, townships, and counties to conform with local needs, ~~except that the standards established by amendment under this subsection must meet or exceed those of the state building code.~~

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 594

HOUSE BILL NO. 1130  
(Committee on Education)  
(At the request of the State Radio Communications)

### MISSING CHILDREN IDENTIFICATION AID

AN ACT to establish procedures upon enrollment of children in schools, licensed day care facilities, or home-based instruction to aid in the identification and location of missing children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. School enrollment procedures to aid identification and location of missing children.

1. When a child enrolls in a school, licensed day care facility, or home-based instruction for the first time, the school, licensed day care facility, or school superintendent of the jurisdiction shall:
  - a. Require the child's parent, guardian, or legal custodian to present to the school, licensed day care facility, or school superintendent of the jurisdiction, within forty days of enrollment, proof of identity of the child; and
  - b. Request the appropriate school records for the child from the previous school attended by the child. The school enrolling the child shall make the request within thirty days of enrollment of the child.
2. If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection 1 within forty days of enrollment or if the school does not receive the school records of the child within sixty days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction shall notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority that no proof of identity has been presented for the child.
3. A school shall transfer records of a child within ten calendar days upon receipt of request.
4. When a school, licensed day care facility, or school superintendent receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school or facility has been reported as a missing child, the school, licensed day care facility, or school superintendent shall:
  - a. Flag the records of the child; and

- b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for school records is received from any source.
5. When the division of vital records of the state department of health and consolidated laboratories receives a notice from a law enforcement authority that a person is reported as missing, the division of vital records shall:
  - a. Flag the records of the individual; and
  - b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for records is received from any source.
6. If it is necessary for law enforcement authorities to conduct an investigation on a missing child, school or day care personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.
7. For purposes of this section:
  - a. "Flag the records" means marking the division of vital records, school, day care, or home-based instruction records in such a manner that any personnel viewing that record will be automatically alerted that the child or individual has been reported as missing.
  - b. "Home-based instruction" means as applied in chapter 15-34.1.
  - c. "Proof of identity" means a certified copy of a birth certificate, a certified transcript, or similar student records from the previous school, or any other documentary evidence the school, licensed day care facility, or school superintendent considers appropriate proof of identity.
  - d. "School" or "licensed day care facility" means all elementary and secondary schools, as well as any licensed day care facilities whether public, private, or parochial.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 595

HOUSE BILL NO. 1193

(Committee on State and Federal Government)

(At the request of the Department of Corrections and Rehabilitation)

### DEPARTMENT OF CORRECTIONS' POWERS

AN ACT to create and enact four new subsections to section 54-23.3-04 of the North Dakota Century Code, relating to giving the director of the department of corrections and rehabilitation powers and duties held by the director of institutions to issue bonds, contract for correctional services, lease and sell penitentiary lands, and provide certain meals to officers and employees; to amend and reenact subsection 48 of section 30.1-01-06 of the North Dakota Century Code, relating to trust accounts; and to repeal sections 54-21-07, 54-21-25, 54-21-26, 54-21-26.1, 54-23-22, 54-23-29, 54-23-45, 54-23-56, 54-23-57, and 54-23-59 of the North Dakota Century Code, relating to duties of the director of institutions in the operation of correctional institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 48 of section 30.1-01-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in custodial arrangements pursuant to chapter 11-22, chapter 12-48, sections 25-01.1-19 to 25-01.1-21, chapter 32-10, section 32-16-37, chapter 32-26, former chapter 47-24, chapter 47-24.1, sections 54-23-27 to 54-23-29, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

SECTION 2. Four new subsections to section 54-23.3-04 of the North Dakota Century Code are created and enacted as follows:

To furnish a bond as approved by the governor and to require bonds from department employees who may be charged with the custody or control of any money or property belonging to the state, and who are not otherwise required by law to give a bond. The bonds must conform to the provisions of law applicable to the bonds of state

- \* NOTE: Subsection 48 of section 30.1-01-06 was also amended by section 18 of Senate Bill No. 2068, chapter 54.



officers and employees. Each such bond must be filed in the office of the secretary of state.

To contract for correctional services, and to provide such services, with the United States, Canada, other states, and any of their governmental subdivisions and agencies and with another agency or governmental unit in this state, or with any private or public correctional or treatment facility or agency. The director may also contract to provide services, without cost to the state, for persons held by any of the jurisdictions mentioned in this section. An adult inmate considered for transfer to another jurisdiction who does not consent to the transfer or a juvenile delinquent considered for transfer to another jurisdiction whose parent or guardian does not consent to the transfer must be given notice of the pending transfer and a review of the proposed transfer to determine the need and justification for the transfer by a board consisting of an institutional staff member, a security or housing staff member, a member of the administrative staff, and a chairman who is designated by the director of corrections. The findings of the review board must be given to the adult inmate or in the case of a juvenile delinquent, the parent or guardian. In addition, in the case of an adult inmate, the findings must be presented to the pardon board, and in the case of a juvenile, to the designated juvenile court for approval of the requested transfer. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of the department of corrections and rehabilitation, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

To sell, lease, or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and to sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions and provisions:

- a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
- b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
- c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.

- d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
- e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.
- f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri river correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.

To provide meals at a fair value or without a charge to officers and employees of the department as required by their job assignments.

SECTION 3. REPEAL. Sections 54-21-07, 54-21-25, 54-21-26, 54-21-26.1, 54-23-22, 54-23-29, 54-23-45, 54-23-56, 54-23-57, and 54-23-59 of the North Dakota Century Code are repealed.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 596

SENATE BILL NO. 2448  
(Senators Mushik, Yockim, Nelson)  
(Representatives Stofferahn, Kretschmar, Wentz)

### LIBRARY AUTHORITIES

AN ACT relating to library authorities; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Academic library" means a library that is part of a college or university that is publicly or privately funded and whose primary role is to provide resources to enrich and support the school's curricula and the research needs of students and faculty.
2. "Library resource center" means a central service unit, whose location is to be agreed upon by members of the multitype library authority and who is responsible for extending special services to support members of the multitype library authority, while meeting all authority standards.
3. "Multitype library authority" means a geographic subdivision within which multitype libraries are organized for the purpose of providing library and information services through cooperation and mutual support.
4. "Multitype library authority network" means the statewide group of multitype library authorities.
5. "Participant library" means any library agreeing to join a multitype library authority.
6. "Public library" means a library that is supported with funds derived from taxation and which maintains a balanced collection of materials to serve the lifelong information, reading, and recreational needs of the general population.
7. "School library media center" means a learning center operated as part of a publicly or privately supported school or school district and whose role is to provide instruction, cooperatively design learning strategies, and provide resources that support and enrich the curriculum, following the North Dakota school library media guidelines.
8. "Special library" means a public or private sector library whose collection is specialized and limited in scope and size and whose role is to provide information to a limited clientele.

SECTION 2. Committee - Membership - Compensation. The superintendent of public instruction shall appoint a seven-member statewide library planning committee. The members must include a state legislator; a representative of the superintendent of public instruction; a representative of the state library; a representative of a school library media center; a representative of a college or university library; a representative of a public library; and a representative of a special library. The term of office for each member of the committee is three years and no person may serve more than two 3-year terms. The superintendent of public instruction shall stagger the terms so that initially, three members are appointed for three years, three members are appointed for two years, and one member is appointed for one year. Each member of the committee is entitled to receive the same per day compensation as provided for members of the legislative council under section 54-35-10, together with expenses as provided in sections 44-08-04 and 54-06-09, while attending meetings or performing duties directed by the committee, except that no compensation may be paid to any committee member who receives compensation or salary as a regular state employee or official.

SECTION 3. Committee powers and duties. In the administration of this Act, the committee may:

1. Adopt bylaws for the conduct of business.
2. Provide guidance for the development, implementation, and improvement of the multitype library authority network.
3. Enter into contracts.
4. Utilize the staff of the state library as permitted by the state librarian.
5. Adopt a compensation plan for network staff.
6. Set the terms and conditions of statewide service contracts with libraries.
7. Determine necessary or desirable interauthority programs or services.
8. Propose standards for service.
9. Set interauthority reimbursement formulas for reciprocal borrowing and other cooperative plans.
10. Conduct periodic performance reviews of multitype library authorities and make service revisions.
11. Determine types of interaction and linkage of the North Dakota multitype library network with interstate and national library networks.

SECTION 4. Multitype library authorities - Establishment. The committee shall establish one multitype library authority during the 1991-93 biennium and shall establish one or more multitype library authorities in each biennium thereafter, until no fewer than four nor more than eight are in existence. In establishing the authorities, the committee shall consider:

1. Population;
2. Population density;
3. Number and types of libraries;
4. Library information resources, including existing libraries, staff and collections;
5. Marketing and transportation patterns;
6. Proximity of municipalities;
7. Geographic size of the authority;
8. Finances; and
9. Any other matter not inconsistent with this section.

SECTION 5. Multitype library authority interim planning committee - Establishment. The statewide library planning committee shall appoint an interim planning committee for the multitype library authority. The interim planning committee must consist of two lay representatives residing within the authority and five librarians. The librarians must, as far as practical, represent public libraries, academic libraries, school library media centers, and special libraries.

SECTION 6. Multitype library authority interim planning committee - Duties. In the administration of this Act, the multitype library authority planning committee may:

1. Elect provisional officers;
2. Identify all librarians eligible to be members of the multitype library authority;
3. Hold informational meetings;
4. Distribute and receive applications for memberships in the multitype library authority;
5. Draft interim bylaws for the multitype library authority;
6. Prepare papers of incorporation;
7. Publicize activities;
8. Prepare a three-year plan for the development of services within the authority and present it to the statewide planning committee for review and approval; and
9. Exercise any other duty that is necessary to carry out this Act.

SECTION 7. Multitype library authority - Membership. To join the regional multitype library authority, a library shall obtain official approval from its board and submit an application to the interim planning committee. A library that agrees to provide to any person residing within

the authority access to its collection on the premises, reciprocal borrowing privileges, and interlibrary loan service, may apply for membership. To be eligible for membership, a library shall have defined service objectives, a fixed location, regular hours of service, an organized collection of information and materials accessible for use by its designated clientele, and a qualified and responsible staff. The library shall have an identifiable organizational structure and a legal basis for operation. The library shall be willing and able to participate in appropriate services and programs as set forth by the multitype library authority. The multitype library authority interim planning committee shall review all applications and approve applicants for membership.

**SECTION 8. Multitype library authority - Board.** Each participating library shall designate a representative to sit on the board of the multitype library authority. At its first meeting, the board shall elect a president, vice president, treasurer, and any other officer it determines to be necessary. The director of the designated library resource center shall serve as an ex officio nonvoting member of the board. The board shall meet at least six times a year and has the power to contract, hire staff and set compensation levels, and adopt bylaws for the conduct of its business. The term of office for all officers of the board is one year, commencing on the January first after election.

**SECTION 9. Multitype library authority - Powers and duties.** In the administration of this Act, each multitype library authority may:

1. Sue and be sued in the name of the authority.
2. Designate for the multitype library authority a central library resource center with responsibility to extend special services to authority members while meeting all authority standards.
3. Designate an administrative officer for the multitype library authority.
4. Establish, manage, maintain, and operate library facilities.
5. Employ necessary personnel to carry out the provisions of this Act.
6. Purchase supplies and equipment.
7. Acquire and hold property by purchase, devise, lease, gift, or otherwise and sell, exchange, or otherwise dispose of property.
8. Prepare and adopt a budget.
9. Receive and account for funds from authority members.
10. Adopt rules.
11. Make an annual report to each member regarding the budget and expenditures, services rendered, program, development plans, audits, and any other information.
12. Enter into contracts necessary to fulfill this Act.
13. Establish and collect rates and charges for services rendered.

14. Invest excess funds.
15. Establish special funds.
16. Join and participate in civic and professional organizations.

**SECTION 10. Multitype library authority members - Rights and responsibilities.** All members of a multitype library authority are entitled to receive supplementary reference services, delivery service for library materials, interlibrary loan services, and assistance with citation and location of materials, and reciprocal borrowing privileges among the users of member libraries. All members of a multitype library authority shall share resources with the exception that rare or restricted materials may be exempt, implementing use standards and protocols; avail themselves of continuing education and training opportunities provided by the authority, participate in reference, referral, and interlibrary loan services using communication systems for information exchanged among all types of libraries; maintain total expenditures for library operation, excluding capital improvements, at a level not lower than the preceding fiscal year, or maintain the same or higher mill levy or mill rate equivalency as the preceding fiscal year; and participate in cooperative bibliographic projects.

**SECTION 11. Voting rights of members.** Each academic, institutional, public, school, and special library has one vote on the board of the multitype library authority. Each operating public school district has one vote on the board of the authority, and represents all public school media centers located within the district. Private and parochial school media centers located within each public school district are a single entity, and shall elect one voting representative from among themselves.

**SECTION 12. Withdrawal of membership.** To discontinue participation in a multitype library authority, a library authority member shall obtain a resolution or letter that originally requested membership, and give notice to the board of the multitype library authority with a copy to the statewide library planning committee, at least two years before the desired effective date of termination. No member may withdraw unless it has been a participant in the multitype library authority for at least five years at the time of termination. The withdrawing member shall return all property of the multitype library authority.

**SECTION 13. Multitype library authority - Operating grants.** Each multitype library authority may, upon formation, apply to the statewide library planning committee for a grant to include costs of operation, equipment, interlibrary loan reimbursement funding, and any other necessary purpose.

**SECTION 14. Fiscal controls and reports.** The board of the multitype library authority shall develop appropriate accounting and record management policies and procedures documenting the operations of the multitype library authority. These policies and procedures must provide that:

1. All records for the multitype library authority and board, including those of the board treasurer, are to be maintained at the authority headquarters.

2. Copies of the multitype library authority board minutes are sent to each member library and to the statewide library planning committee.
3. The fiscal year runs from July first to June thirtieth and financial records and activities are maintained in accordance with accepted accounting practices. A record of all bills, payments, and receipts must be presented to the multitype library authority board by the treasurer at regular meetings and at any other meeting as required by the board.

SECTION 15. Cooperative services and activities.

1. Each multitype library authority shall include as part of its five-year plan for development, provisions for:
  - a. Reference services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the authority.
  - b. Interlibrary loan services on behalf of residents of the authority.
  - c. Delivery services for library materials.
  - d. Citation and location services for library materials.
2. Each multitype library authority may provide for:
  - a. Consultant services and shared staff expertise;
  - b. Cooperative or coordinated acquisition of library materials or subject specialization programs;
  - c. Reciprocal borrowing between member librarians;
  - d. Staff development and inservice training programs;
  - e. Centralized ordering, cataloging, and processing of the library materials;
  - f. Cooperative storage of library materials and lost-copy protection programs;
  - g. Access to computerized literature citation and information data bases;
  - h. Preservation of library materials programs;
  - i. Public relations services; and
  - j. Any other services not inconsistent with this section.

SECTION 16. Dissolution of the multitype library authority. If the need for a multitype library authority ceases to exist, the board of the multitype library authority may, by a two-thirds vote of its members, declare its intent to dissolve the organization and file with the statewide library



planning committee a plan for affecting such dissolution. Upon receipt of the dissolution plan, the committee shall determine if the area of service can be allocated to other multitype library authorities, determine whether the assets and liabilities of the multitype library authority seeking to dissolve can be assumed and absorbed by adjoining multitype library authorities, and consider any other factors which relate to the operation and functioning of the multitype library authority seeking to dissolve. If the committee determines that the multitype library authority should be dissolved, the dissolution takes effect when all legal and fiscal obligations of the multitype library authority have been satisfied.

SECTION 17. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of funding the statewide library planning committee and the beginning of the establishment and operation of a multitype library authority for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 597

SENATE BILL NO. 2258  
(Lips)

**BUDGET STABILIZATION FUND TRANSFERS**

AN ACT to create and enact a new section to chapter 54-27.2 of the North Dakota Century Code, relating to transfers from the budget stabilization fund; to amend and reenact sections 54-27.2-01, 54-27.2-02, and 54-27.2-03 of the North Dakota Century Code, relating to transfers of funds from the budget stabilization fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-01. Budget stabilization fund. The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than ~~fifteen~~ five percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

SECTION 2. AMENDMENT. Section 54-27.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-02. Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of ~~forty~~ one hundred eleven million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

SECTION 3. AMENDMENT. Section 54-27.2-03 of the North Dakota Century Code is amended and reenacted as follows:

54-27.2-03. Transfers and expenditures from budget stabilization fund. If the director of the office of management and budget projects that general fund revenues for the biennium will be at least ~~five~~ two and one-half percent less than estimated by the most recently adjourned special or regular session of the legislative assembly, and if the governor orders a transfer, which must be reported to the budget section of the legislative council, the state treasurer shall transfer the appropriate funds from the budget stabilization

fund to the state general fund to offset the decrease in general fund revenues. The amount transferred from the budget stabilization fund upon order of the governor may not exceed the difference between an amount five two and one-half percent below the general fund revenue projections for the biennium of the most recently adjourned special or regular session of the legislative assembly and the general fund revenue projections for the biennium by the director of the office of management and budget. The amount transferred from the budget stabilization fund upon order of the governor to the state general fund may be expended within the limits of legislative guidelines and general fund appropriations of the most recently adjourned special or regular session of the legislative assembly. Moneys in the budget stabilization fund may not be appropriated or expended except as provided in this section; but the legislative assembly may provide for transfer of all or a portion of the moneys in the budget stabilization fund to the common schools trust fund established under section 7 of article IX of the Constitution of North Dakota. For purposes of this section, "general fund revenues for the biennium" and "general fund revenue projections for the biennium" include the general fund balance at the beginning of the biennium.

SECTION 4. A new section to chapter 54-27.2 of the North Dakota Century Code is created and enacted as follows:

Transfer to avoid negative general fund balance. Notwithstanding any other provision of law, if the governor orders a transfer, the state treasurer shall transfer any necessary funds from the budget stabilization fund to the state general fund to offset a negative balance in the state general fund. Any transfers made must be reported to the budget section of the legislative council. The limitations of this chapter with respect to projected general fund revenues do not apply to limit the transfer provided under this section. Upon order of the governor the state treasurer shall return to the budget stabilization fund any transfers or portions thereof which may have been made during the same biennium.

SECTION 5. EXPIRATION DATE. Sections 2 and 4 of this Act are effective through June 30, 1993, and are thereafter ineffective.

Approved April 16, 1991

Filed April 18, 1991

## CHAPTER 598

SENATE BILL NO. 2074  
(Legislative Council)  
(Interim Legislative Management Committee)

**LEGISLATIVE COUNCIL MEMBERS**

AN ACT to amend and reenact section 54-35-01 of the North Dakota Century Code, relating to appointments to the legislative council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-01 of the North Dakota Century Code is amended and reenacted as follows:

54-35-01. Council - Created - Members - Vacancy - Terms. ~~There shall be a~~ The North Dakota legislative council which is, hereinafter referred to as the legislative council or the council. ~~The legislative council shall consist~~ consists of the majority and minority leaders of the house and of the senate plus five senators and six representatives to be chosen biennially before the close of each regular legislative session. In the house of representatives the speaker of the house shall appoint as council members ~~must be chosen in the same manner as the members of other committees from the list of nine~~ three members recommended by the leader of each political faction and ~~must be divided equally between such factions,~~ except that the speaker must by virtue of his office be one of the three members appointed from ~~his~~ the speaker's faction. In the senate the lieutenant governor shall appoint as council members ~~must be chosen by the lieutenant governor; three from members recommended by the majority faction leader and two from members recommended by the minority faction; such council members to be chosen from a list of seven members recommended to him by each such faction.~~ In the event ~~there shall be less than nine members of the minority faction in the house of representatives or less than seven members of the minority faction in the senate; the names of all members of the minority faction with the exception of the minority leader must be recommended.~~ Any vacancy occurring when the legislative assembly is not in session must be filled by the selection of another member of the legislative assembly belonging to the same faction as the member originally appointed, the selection to be made by the remaining senate or house members of the council, depending upon which body has the vacancy. Each senator and each representative chosen to serve on the council shall serve until a new council has been selected at the next regular legislative session; provided, however, that no senator, not a holdover, who is not reelected to the senate, and no representative, who is not reelected to the house of representatives, may serve as a member of the council beyond the closing day of the term to which ~~he was~~ elected. Any vacancy occurring because any member of the council is not reelected must be filled for the period from the beginning of the session until a new council is selected, in the same manner as the original council is selected.

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

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 599

HOUSE BILL NO. 1603

(Martinson)

(Approved by the Committee on Delayed Bills)

### EMPLOYEE BENEFITS PROGRAMS COMMITTEE

AN ACT to amend and reenact sections 54-35-02.3 and 54-35-02.4 of the North Dakota Century Code, relating to the membership of the legislative council's committee on public employees retirement programs and its jurisdiction over public employee and retiree health plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.3 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.3. ~~Committee on public employees retirement~~ Employee benefits programs committee - Appointment - ~~Quorum~~ - Selection of chairman. The legislative council ~~shall~~, during each biennium, shall appoint ~~a~~ an ~~employee benefits programs committee on public employees retirement programs~~ in the same manner as the council appoints other interim committees. ~~The membership of the committee council shall consist of four~~ appoint five members of the house of representatives and ~~three~~ four members of the senate to the committee. ~~The council shall designate the chairman of the committee must be designated by the legislative council. Four members of the committee shall constitute a quorum; and the~~ The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

SECTION 2. AMENDMENT. Section 54-35-02.4 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.4. ~~Committee on public employees retirement~~ Employee benefits programs committee - Powers and duties.

1. The employee benefits programs committee on public employees retirement programs shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction, including an actuarial review. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative council and to the legislative assembly.
2. To carry out its responsibilities, the committee, or its designee, is authorized to may:

- a. Enter into contracts, including retainer agreements, with an actuary or actuarial firm for expert assistance and consultation. ~~However, each~~ Each retirement, insurance, or retiree insurance program shall pay, from its retirement, insurance, or retiree health benefits fund, as appropriate, and without the need for a prior appropriation, the cost of any actuarial report required by the committee which relates to that ~~retirement~~ program.
  - b. Call on personnel from state agencies or political subdivisions to furnish such information and render such assistance as the committee may from time to time request.
  - c. Establish rules for its operation, including the submission and review of proposals and the establishing of standards for actuarial review.
3. The committee may solicit draft measures and proposals from interested persons during the interim between legislative sessions, and may also study measures and proposals referred to it by the legislative assembly or the legislative council.
  4. A copy of the committee's report concerning any legislative measure shall, if that measure is introduced for consideration by a legislative assembly, be appended to the copy of that measure which is referred to a standing committee.
  5. A legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retiree health insurance program may not be introduced in either house unless it is accompanied by a report from the committee. A majority of the members of the committee, acting through the chairman, ~~shall have~~ has sole authority to determine whether any legislative measure affects a public employees retirement program.
  6. Any amendment made during a legislative session to a legislative measure affecting a public employees retirement program, public employees health insurance program, or public employee retirees health insurance program may not be considered by a standing committee unless it is accompanied by a report from the employee benefits programs committee on public employees retirement programs.
  7. Any legislation enacted in contravention of ~~the provisions of~~ this section is invalid and of no force and effect, and any benefits provided under such legislation must be reduced to the level current prior to enactment.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 600

SENATE BILL NO. 2073  
(Legislative Council)  
(Interim Legislative Management Committee)

### LEGISLATIVE COUNCIL DUTIES

AN ACT to amend and reenact sections 15-10-14.2, 15-59-05.2, 21-11-05, 24-02-37.1, 38-14.1-04.2, 48-10-02, 49-21-22, 54-01-17.2, 54-12-14, 54-35-02.5, 54-40.2-05.1, 54-44.4-04, 54-52-06, 54-52.1-04.3, 54-55-04, and 57-01-11.1 of the North Dakota Century Code, relating to the legislative council; to repeal section 49-21-22, relating to the regulatory reform review commission; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-14.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-14.2. Higher education system review - ~~Special committee~~ - Seven-year plan - Report to legislative assembly.

1. ~~On or before August first of In~~ each odd-numbered year, the state board of higher education shall meet with a ~~special committee~~ of the legislative council consisting of the majority and minority leaders and their assistant leaders from the house and senate, the speaker of the house, and the governor, ~~or their designees, or the governor's designee~~ to solicit ideas and issues the ~~committee council~~ members and the governor believe are priority issues regarding the future of the system of higher education in this state.
2. ~~On or before February first of In~~ each even-numbered year, the state board of higher education shall present to the ~~committee legislative council~~ and the governor a seven-year comprehensive plan for the system of higher education in this state. The plan must describe the current and desired condition of the system, in light of the needs of faculty, administrators, and students, and must specifically describe:
  - a. The measures the board plans to take to ensure that the system of higher education meets the postsecondary education and training needs of the citizens and employers of the state.
  - b. The measures the board plans to take to improve the quality of higher education for students.
3. The seven-year plan must contain the rationale of the state board of higher education for the items it has listed in the plan as top priority and the methods the board intends to take to address these top priority issues during the next seven years. The plan must

describe what the citizens of the state can expect as a result of the board's actions, the cost or savings of those actions, and specific, detailed options for meeting any costs.

4. The state board of higher education shall report on the seven-year plan, including a report on how the funds proposed in the budget for the upcoming biennium will be used to implement the plan, to the legislative assembly at the organizational session.

\* SECTION 2. AMENDMENT. Section 15-59-05.2 of the North Dakota Century Code is amended and reenacted as follows:

15-59-05.2. Interagency cooperative agreements for the provision of educational-related services to handicapped students —~~Report by department of public instruction.~~ The department of public instruction shall cooperatively develop and implement interagency agreements with appropriate public and private agencies, including the director of institutions, the state department of human services, and the state department of health and consolidated laboratories, for purposes of maximizing available state resources in fulfilling the educational-related service requirements of Public Law 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended. ~~The department of public instruction shall report to the legislative council interim committee on education the content of such interagency agreements and the progress in achieving the goals and objectives set out therein at such time as the interim committee may direct.~~

\*\* SECTION 3. AMENDMENT. Section 21-11-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-05. Approved application filed with industrial commission ~~and legislative council.~~ Upon approval of the application, as submitted or modified, the economic development commission shall file ~~such the~~ application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the state industrial commission ~~and with the legislative council.~~ The ~~legislative council economic development commission~~ shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

\*\*\* SECTION 4. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of state parks and recreation, the director of the economic development commission, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. The commissioner shall provide staff services to the committee. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission

\* NOTE: Section 15-59-05.2 was also amended by section 3 of Senate Bill No. 2245, chapter 592.

\*\* NOTE: Section 21-11-05 was also amended by section 28 of Senate Bill No. 2058, chapter 95.

\*\*\* NOTE: Section 24-02-37.1 was also amended by section 91 of Senate Bill No. 2050, chapter 231; by section 3 of Senate Bill No. 2054, chapter 640; and by section 30 of Senate Bill No. 2058, chapter 95.



who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 5. AMENDMENT. Section 38-14.1-04.2 of the North Dakota Century Code is amended and reenacted as follows:

38-14.1-04.2. Advisory committee responsibilities. The committee, after consultation with the commission, shall adopt procedures under which it is to operate. The responsibilities of the committee, with the administrative and staff assistance and accounting of all funds to be provided by the commission, include:

1. An inventory and brief description and analysis of the conclusions from all reclamation research projects in this state that have been conducted to date as well as an inventory and brief description of all ongoing projects.
2. A review of all past and current reclamation research projects to identify all existing or future research needs and objectives, to prevent duplication, and to establish priorities for future reclamation research according to the objectives established in section 38-14.1-04.3.
3. A review of all proposed reclamation research projects administered by the commission and a determination of which reclamation research projects should be funded and the proper funding levels for the projects.
4. Recommend to the commission future reclamation research budgets to be administered by the commission.
5. ~~Preparation of yearly reports to the legislative council on the status of all reclamation research projects, conclusions reached, and future goals and objectives.~~

SECTION 6. AMENDMENT. Section 48-10-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-10-02. Capitol building fund to be administered by the capitol grounds planning commission - Procedure for expenditure of certain funds. The capitol grounds planning commission shall have general powers to superintend the administration of the capitol building fund, its interest and income fund, and its investments and properties. It may cause any lands now held in such funds to be sold at market value, direct the conversion of any securities now held by such funds to cash, approve expenditures from such funds subject to law and legislative appropriations, and to do all other things necessary to carry out the intent and purposes of this section. The board of university and school lands, or its designee, on the commission's behalf, shall see to the investment and management of the capitol building fund and its interest and income fund, and shall account to the commission concerning these funds at the commission's request.

Provided further, all moneys and other property in the capitol building fund, except as otherwise appropriated, are hereby dedicated and reserved to

the exclusive purpose of the construction of an addition to the legislative wing of the state capitol building, and the capitol grounds planning commission shall take necessary steps to accumulate and conserve the money and property in the capitol building fund for such purpose.

The commission may, during any biennium, expend from the interest and income fund of the capitol building fund a sum not to exceed fifty percent of the unencumbered balance on the first day of any biennium, and such amount is hereby appropriated to the capitol grounds planning commission. The expenditure may be made, after consideration of the capitol grounds master plan, for projects or planning but shall not exceed fifty thousand dollars per biennium. The expenditure may only be made upon approval by two-thirds of the total membership of the commission. The expenditure ~~shall~~ must be made upon a voucher, or vouchers, prepared by the ~~legislative council staff~~ office of management and budget at the direction of the commission.

**SECTION 7. AMENDMENT.** Section 49-21-22 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-22. Regulatory reform review commission - Appointments - Report to legislative council. The regulatory reform review commission shall review the operation and effect of subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22 on an ongoing basis during the interims between the 1989, 1991, 1993, and 1995 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1990, 1992, and 1994. The regulatory reform review commission consists of the members of the public service commission, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The public service commission shall provide technical assistance and staff services to the regulatory reform commission ~~and the legislative council shall provide staff services~~. The expenses of the regulatory reform review commission while carrying out its duties under subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22 including expenses incurred for holding meetings and preparing reports shall, upon the order of the public service commission, be paid by the telecommunications companies affected by subsection 2 of section 49-02-01, section 49-21-01, subsection 6 of section 49-21-01.1, sections 49-21-01.2, 49-21-01.3, 49-21-01.4, 49-21-02.1, 49-21-02.2, 49-21-04 through 49-21-07, 49-21-09, and 49-21-22 in the manner provided in section 49-02-02.

**SECTION 8. AMENDMENT.** Section 54-01-17.2 of the North Dakota Century Code is amended and reenacted as follows:

54-01-17.2. North Dakota-Saskatchewan-Manitoba boundary advisory committee. The North Dakota-Saskatchewan-Manitoba boundary advisory committee consists of the governor, who shall act as chairman, five members of the legislative assembly to be chosen by the chairman of the legislative council, one of whom is to be chosen by the committee to act as vice chairman, and five executive branch members, appointed by the governor. The committee shall meet with an appropriate body of the province of Saskatchewan, an appropriate body of the province of Manitoba, or jointly with the appropriate bodies of both provinces, for the purpose of discussion of matters of mutual concern. The committee shall make any recommendations

it deems necessary to the appropriate government or private entity. The expenses incurred by the executive branch members and the legislative council members in the performance of their duties under this section must be paid from funds appropriated for the respective offices and agencies. The committee may request provision of appropriate staff services from the office of the governor.

\* SECTION 9. AMENDMENT. Section 54-12-14 of the North Dakota Century Code is amended and reenacted as follows:

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation. There is hereby created a fund to be known as the attorney general assets forfeiture fund. The fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36 and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total aggregate amount in the fund may not exceed five hundred thousand dollars and at the end of each fiscal year any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For paying, at the discretion of the attorney general, awards for information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping for law enforcement functions forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state controlled substances board or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of chapter 19-03.1.
6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of such the fund, and shall personally approve, in writing, all requests from the chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of said the fund and

\* NOTE: Section 54-12-14 was also amended by section 1 of House Bill No. 1156, chapter 581, and by section 2 of Senate Bill No. 2548, chapter 133.

is accountable to the legislative council, upon request, for the expenditure thereof.

SECTION 10. AMENDMENT. Section 54-35-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.5. Committee on administrative rules. The legislative council shall, during each biennium, appoint a committee on administrative rules in the same manner as the council appoints other interim committees. ~~The membership of the committee may appoint one or more citizen members representing the segment of the state's population affected by the rules to be reviewed.~~ The legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

\* SECTION 11. AMENDMENT. Section 54-40.2-05.1 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-05.1. Review of agreement - Report. Any state agency entering into an agreement approved by the governor pursuant to this chapter, upon the request of any political subdivision affected by the agreement, shall review and determine the utility and effectiveness of the agreement taking into account the original intent of the parties, and determine whether the parties are in substantial compliance with all provisions of the agreement. In making its determinations, the state agency shall provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The state agency shall prepare a report of its determinations made pursuant to this section and shall submit copies of the report to the ~~legislative council and the governor.~~

SECTION 12. AMENDMENT. Section 54-44.4-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-04. Office of management and budget - Rules and regulations. The office of management and budget shall ~~promulgate~~ adopt, pursuant to chapter 28-32, rules and regulations necessary to administer this chapter. ~~Additionally, such rules and regulations, and any changes thereto, must be submitted to the legislative council for its review and approval or disapproval prior to promulgation.~~

\*\* SECTION 13. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay monthly such contribution into the retirement fund from its funds appropriated for payroll and salary or any other funds available for such purposes. Any governmental unit failing to pay such contributions monthly is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. The board shall report to each session of the legislative assembly, ~~or such committee as may be designated by the~~

\* NOTE: Section 54-40.2-05.1 was also amended by section 6 of Senate Bill No. 2239, chapter 606.

\*\* NOTE: Section 54-52-06 was also amended by section 4 of House Bill No. 1190, chapter 630.

legislative council to hear such report in the interim between legislative sessions; the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 14. AMENDMENT. Section 54-52.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.3. Contingency reserve fund - Continuing appropriation. The board shall establish under a self-insurance plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. The board shall determine the amount necessary to provide a balance in the contingency reserve fund equal to three and one-half months of claims paid based on the average monthly claims paid during the twelve-month period immediately preceding March first of each year, and report its determination, by March fifteenth of each year, to each session of the legislative assembly or the committee designated by the legislative council to hear the report in the interim between legislative sessions. The board may arrange for the services of an actuarial consultant to assist the board in making the determination. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

SECTION 15. AMENDMENT. Section 54-55-04 of the North Dakota Century Code is amended and reenacted as follows:

54-55-04. Duties of commissioners and commission. Each commissioner shall attend the annual meeting of the national conference of commissioners on uniform state laws and shall promote uniformity in state laws on those subjects where uniformity may be deemed desirable and practicable. The commission shall also promote as far as practicable the uniform judicial application and construction of all uniform state laws. During the interim between legislative sessions, the commission shall ~~shall~~ may submit its recommendations for enactment of uniform and model laws to the legislative council for its review and recommendation. Commissioners shall provide such assistance to the legislative council as the legislative council requests with respect to its review of uniform and model laws. During each biennial legislative session, and at any other time as the commission may deem proper, the commission shall report to the legislative assembly an account of its transactions and its advice and recommendations for legislation. The report must include the recommendations of the legislative council with respect to uniform and model laws recommended by the commission.

SECTION 16. AMENDMENT. Section 57-01-11.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-01-11.1. Reports on auditing enhancement program and settlement of tax assessments. The state tax commissioner shall submit reports quarterly to the budget section of the legislative council may request the state tax commissioner to report on the progress made in collecting additional tax revenues under the auditing enhancement program and on settlements of tax assessments. For any settlements of tax assessments made during the quarterly period covered by the reports, the reports must contain the total amount assessed as of the end of the quarter period and the amounts collected, including a summary reporting major amounts collected.

SECTION 17. REPEAL - EFFECTIVE DATE. Section 49-21-22 of the 1989 Supplement to the North Dakota Century Code is repealed effective on January 1, 1995.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 601

SENATE BILL NO. 2346  
(Senators Graba, Robinson)  
(Representatives St. Aubyn, Gates, Skjervén)

### LOCAL GOVERNMENT EFFICIENCY GRANTS

AN ACT to create and enact a new section to chapter 54-35.2 of the North Dakota Century Code, relating to administration and provision of planning grants to county and city governments for plans that are intended to improve the efficiency of local government; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-35.2 of the North Dakota Century Code is created and enacted as follows:

Local government efficiency planning grants.

1. The advisory commission on intergovernmental relations shall administer planning grants not exceeding twenty-five thousand dollars per grant to county or city governments, which may be made upon approval of plans intended to increase the efficiency of local government through restructuring of county or city government, changes in county boundaries including consolidation of counties, or consolidation of county and city services.
2. To be eligible for receipt of a planning grant under this section, a preliminary plan must be submitted to the advisory commission on intergovernmental relations which has been approved by a majority of the members of the governing body of each county and city affected by the plan. The preliminary plan must include:
  - a. Detailed description of the changes that would be studied under the planning grant.
  - b. Substantial evidence that implementation of the changes to be studied would result in improved efficiency of county or city government, and an estimate of any resulting cost savings to taxpayers.
  - c. Analysis of any law, ordinance, or home rule charter change or implementation needed, or election that must be held, to accomplish the proposed plan.
  - d. Substantial evidence that requested planning grant funds are necessary, the amount requested, and any amounts that affected political subdivisions will contribute to the costs of project planning or implementation in money, personnel time, or any other manner.

- e. The proposed timetable for conducting the necessary phases of the study and implementation.
3. In approving a planning grant under this section, the advisory commission on intergovernmental relations may impose any conditions it deems appropriate including requiring periodic reports, furnishing of matching funds, or requiring submission of periodic requests for release of funds with evidence of completed portions of the project. The advisory commission on intergovernmental relations may terminate funding of a previously approved grant under this section at any time if the commission is dissatisfied with performance or potential of any part of the project. The advisory commission on intergovernmental relations shall report annually to the budget section of the legislative council on the grants distributed to counties and cities.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much thereof as may be necessary, to the advisory commission on intergovernmental relations for the purpose of providing planning grants not exceeding twenty-five thousand dollars per grant to counties and cities under section 1 of this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 602

SENATE BILL NO. 2205  
(Committee on State and Federal Government)  
(At the request of the Lieutenant Governor)

### INDIAN AFFAIRS COMMISSION

AN ACT to amend and reenact sections 15-63-01, 54-36-01, 54-36-02, 54-36-03, and 54-36-05 of the North Dakota Century Code, relating to the state board for Indian scholarships and the Indian affairs commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-63-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-63-01. State board for Indian scholarships. There is hereby established a state board for Indian scholarships consisting of an Indian appointed by the governor, the executive director of the state Indian affairs commission, and the commissioner of higher education or the commissioner's designee. The commissioner of higher education or the commissioner's designee shall serve as chairman chairperson and the executive director of the state Indian affairs commission shall serve as secretary of the board for Indian scholarships. The state board of higher education shall request scholarship funds and staff to administer the Indian scholarship program in the board's biennial budget request.

\* SECTION 2. AMENDMENT. Section 54-36-01 of the North Dakota Century Code is amended and reenacted as follows:

54-36-01. Commission - Members - Officers - Expenses of members. The North Dakota Indian affairs commission ~~shall consist~~ consists of the governor; ~~attorney general; executive director of the department of human services; state health officer; director of job service North Dakota; the tribal chairmen,~~ four members appointed by the governor from the state at large, three of whom must be of Indian descent, must be enrolled members of a tribe, and must be current voting residents of the state of North Dakota, and the chairpersons of the Standing Rock, Fort Berthold, Fort Totten, and Turtle Mountain Indian Reservations or their designees; one other representative of each reservation appointed by the tribal council; a representative of the North Dakota county commissioners' association who lives on or adjacent to an Indian reservation; a representative of the league of North Dakota cities; three members at large who must be at least one-fourth degree of Indian blood appointed by the governor; and a representative of each house of the legislative assembly who must be chosen on a bipartisan basis by the presiding officer of each house. The commission may call upon the director of the economic development commission for consultation upon business and industrial matters involved in the operation of the commission in the absence of the chairperson, the vice chairperson. The governor or his authorized representative shall act as chairman is the chairperson of the commission and the commission shall select one of its members as secretary. All members.

\* NOTE: Section 54-36-01 was also amended by section 39 of Senate Bill No. 2058, chapter 95.



The commission shall meet quarterly or as otherwise agreed. Members of the commission or their designees shall the vice chairperson are entitled to receive the mileage and expenses for attending each meeting as are allowed other state officers which must be paid from the appropriation made to such commission except mileage and expenses of state officials must be paid from the appropriation for the department they represent.

SECTION 3. AMENDMENT. Section 54-36-02 of the North Dakota Century Code is amended and reenacted as follows:

54-36-02. Employees - Duties - Compensation. The governor, after consultation with the members of the commission, shall appoint an executive director of the Indian affairs commission who must serve at the pleasure of the governor. The Indian affairs commission governor may employ an executive director who may not be a member of the commission and such other clerical, professional, and technical personnel, as it the governor deems necessary, and shall prescribe their duties and fix their compensation.

SECTION 4. AMENDMENT. Section 54-36-03 of the North Dakota Century Code is amended and reenacted as follows:

54-36-03. Powers and duties. The Indian affairs commission shall have the power to assist and to mobilize the support of state and federal agencies in assisting Indian individuals and groups in North Dakota, especially the four five tribal councils, as they seek to develop their own goals, project plans for achieving those goals, and implement those plans. The commission's duties are:

1. To investigate any phase of Indian affairs and to assemble and make available the facts needed by tribal, state, and federal agencies to work effectively together.
2. To assist tribal, state, and federal agencies in developing programs whereby Indian citizens may achieve more adequate standards of living.
3. To assist tribal groups in developing increasingly effective institutions of self-government.
4. To work for greater understanding and improved relationships between Indians and non-Indians.
5. To seek increased participation by Indian citizens in local and state affairs.
6. To confer with and coordinate officials and agencies of other governmental units and congressional committees with regard to Indian needs and goals.
7. To encourage and propose agreements and accords between federal, state, and local agencies and the several tribal governments, and, pursuant to chapter 54-40.2, to assist in monitoring and negotiating agreements and accords when asked by an affected tribe.

SECTION 5. AMENDMENT. Section 54-36-05 of the North Dakota Century Code is amended and reenacted as follows:

54-36-05. Meetings - ~~How called~~ Quorum. The Indian affairs commission or any subcommittee it may appoint may meet at such times and places as it may deem advisable. Meetings may be called by the chairman or by a call signed by a majority of the members of the commission. At any meeting of the commission a majority of the members shall constitute constitutes a quorum and a majority of such the quorum shall have authority to may act in any matter falling within the jurisdiction of the commission.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 603

HOUSE BILL NO. 1569  
(Representatives Kelsch, Svedjan)  
(Senators Lips, Stenehjelm, Mushik)

### DEPENDENCY TREATMENT FACILITIES

AN ACT to amend and reenact section 54-38-07 of the North Dakota Century Code, relating to establishment of facilities for the treatment of drug dependent persons by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-38-07 of the North Dakota Century Code is amended and reenacted as follows:

54-38-07. Facilities for treatment of alcoholism - Contracts. The department may establish new facilities for the treatment of alcoholics and drug dependent persons- in areas of the state where a need exists and no private facilities are available to contract for chemical abuse or dependency treatment services. The department may contract for the treatment of alcohol and drug dependent persons by eligible vendors who meet the standards of operations established by the department. When the department chooses to contract, the department shall select eligible vendors who can provide economical and appropriate treatment for alcohol and drug dependent persons. The department shall contract for these services on the basis of the same unit costs incurred by the department in delivering like services. Each contract entered into pursuant to this section must provide that the private vendor-contractor will accept and treat each chemically dependent or chemical abusing client referred to the vendor pursuant to the contract. As used in this section, "standards of operations" includes a determination by the department that the vendor is financially responsible and will continue to provide services throughout the contract period.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 604

HOUSE BILL NO. 1389  
(Representative Kretschmar)  
(Senator Satrom)

### JOINT POLITICAL SUBDIVISION AGREEMENTS

AN ACT to amend and reenact section 54-40-07 of the North Dakota Century Code, relating to the authority of political subdivisions to enter into agreements with other political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40-07 of the North Dakota Century Code is amended and reenacted as follows:

54-40-07. ~~Chapter not to affect~~ Clarification of constitutional authority and effect of other statutes.

1. The specificity of this chapter or any other law may not be construed to limit the general authority of a political subdivision to enter into agreements pursuant to article VII, section 10 of the Constitution of North Dakota, except for specific limitations on that authority, and subject to specific procedural requirements, imposed by this chapter, any other law, or home rule charter.
2. This chapter does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 605

HOUSE BILL NO. 1497  
(Martin, Wardner, Kerzman)

### REGIONAL PLANNING COUNCILS

AN ACT to amend and reenact subdivision c of subsection 1 of section 54-40.1-03 and subsection 1 of section 54-40.1-04 of the North Dakota Century Code, relating to membership, powers, and duties of regional planning councils.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 54-40.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. One soil conservation district supervisor from each county must be appointed to the regional council to represent the interests of the resource conservation and development program or any other related programs of the United States department of agriculture agricultural and natural resource interests of the region. The appointment of the soil conservation district supervisor must be made by the respective boards of soil conservation districts. If any county should contain more than one soil conservation district, either in whole or in part, the concerned boards shall meet and jointly agree upon a single appointment to the regional council.

\* SECTION 2. AMENDMENT. Subsection 1 of section 54-40.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Adopt agreements, rules, or procedures as may be necessary to effectuate planning and development in the region.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 54-40.1-04 was also amended by section 42 of Senate Bill No. 2058, chapter 95.

## CHAPTER 606

SENATE BILL NO. 2239  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Lieutenant Governor)

### PUBLIC-TRIBAL AGREEMENTS

AN ACT to amend and reenact sections 54-40.2-02, 54-40.2-03.1, 54-40.2-03.2, 54-40.2-04, 54-40.2-05, 54-40.2-05.1, 54-40.2-06, 54-40.2-08, and 54-40.2-09 of the North Dakota Century Code, relating to agreements between public agencies and Indian tribes; and to repeal section 54-40.2-03 of the North Dakota Century Code, relating to agreement specifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-02. Authorization to enter agreements - General contents. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements.

SECTION 2. AMENDMENT. Section 54-40.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-03.1. Agreement - Notice. Before the submission of an agreement to the governor After the parties to an agreement have agreed to its contents, the state agency involved shall publish a notice containing a summary of the agreement once each week for two consecutive weeks in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the state agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within thirty days of the first publication of the notice.

SECTION 3. AMENDMENT. Section 54-40.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-03.2. Public hearing - Notice. If the state agency receives a request pursuant to section 54-40.2-03.1, the state agency shall hold a public hearing prior to the submission of the agreement to the governor at which any persons interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published once each week for two consecutive weeks prior to the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in any newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement, and must state the times and places at which the agreement will be available to the public for inspection and copying.

SECTION 4. AMENDMENT. Section 54-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-04. Submission Approval of agreement ~~to~~ by governor and tribes.

- ~~1- As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the governor of North Dakota-~~
- ~~2- If the governor disapproves an agreement, the governor shall provide a detailed, written statement to and the governing bodies of the public agency and tribal government concerned, specifying the reasons for the disapproval-~~
- ~~3- The agency or agencies seeking to enter into the agreements shall submit the agreements to the governor. In deciding whether to approve the agreement, the governor shall use the following criteria:~~
  - ~~a. The purpose of the agreement furthers the goals of the agency-~~
  - ~~b. The agreement is in the best interest of the state as a whole-~~
  - ~~c. The agency or agencies have authority to fulfill the agreement-~~

If the governor does not disapprove the agreement within thirty days after submission, it must be considered approved tribes involved. If the agreement so provides, it may be submitted to the secretary for approval.

SECTION 5. AMENDMENT. Section 54-40.2-05 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-05. Filing of agreement. Within ten days after a declaration of approval by the governor and following approval of the agreement by the tribe or tribes affected by the agreement and prior to commencement of its performance, an agreement made pursuant to this chapter must be filed with:

1. The secretary.

2. The clerk of court of each county where the principal office of one of the parties to the agreement is located.
3. The secretary of state.
4. The affected tribal government.

\* SECTION 6. AMENDMENT. Section 54-40.2-05.1 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-05.1. Review of agreement - Report. ~~Any state agency entering into an agreement approved by the governor pursuant to this chapter; upon the request of any political subdivision or any tribe affected by the an approved agreement, the Indian affairs commission shall review and determine make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties, and determine may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its determinations findings, the state agency Indian affairs commission shall provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The state agency Indian affairs commission shall prepare a written report of its determinations findings made pursuant to this section and shall submit copies of the report to the legislative council and the governor affected political subdivision or public agency, the governor, and the affected tribes. The findings of the Indian affairs commission made under this section are for informational purposes only. In any administrative hearing or legal proceeding in which the performance of any party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.~~

SECTION 7. AMENDMENT. Section 54-40.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-06. Revocation of agreement. ~~An Any agreement made pursuant to this chapter is subject to must include provisions for revocation by any party upon six months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of two years.~~

SECTION 8. AMENDMENT. Section 54-40.2-08 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-08. Specific limitations on agreements. Nothing in this chapter may be construed to ~~authorize an agreement that:~~

1. ~~Enlarges~~ Authorize as agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota.
2. ~~Authorizes~~ Authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country.

\* NOTE: Section 54-40.2-05.1 was also amended by section 11 of Senate Bill No. 2073, chapter 600.



3. ~~Authorizes~~ Authorize a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.
4. ~~Provides~~ Authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

SECTION 9. AMENDMENT. Section 54-40.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-09. Validity of existing agreements.

- ~~1-~~ This chapter does not affect the validity of any agreement entered into between a tribe and a public agency prior to ~~July 1, 1983-~~
- ~~2-~~ However, any such agreement must satisfy the requirements of this chapter no later than January 1, 1985 the effective date of this Act.

SECTION 10. REPEAL. Section 54-40.2-03 of the North Dakota Century Code is repealed.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 607

SENATE BILL NO. 2101  
(Committee on State and Federal Government)  
(At the request of the State Personnel Board)

### PERSONNEL BOARD COMPOSITION AND HEARINGS

AN ACT to amend and reenact section 54-42-01 and subsection 3 of section 54-44.3-07 of the North Dakota Century Code, relating to the state personnel board constituting the merit system council and the authority of the state personnel board to hear and decide appeals from agency employer actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-42-01 of the North Dakota Century Code is amended and reenacted as follows:

54-42-01. North Dakota merit system council. There shall be a North Dakota merit system council to which shall consist of the state personnel board and the central personnel division provided for in section 54-44.3-03. The director of the central personnel division must be the director of and secretary to the merit system council, serving in a nonvoting capacity. The central personnel division must be the secretariat to the merit system council.

SECTION 2. AMENDMENT. Subsection 3 of section 54-44.3-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Review any personnel action relating to pay ranges or job classification. Hear, consider, and determine appeals by nonprobationary employees in the classified service from agency grievance procedures under section 54-44.3-12.2 related to position classifications, pay grade assignments, merit system qualification, discrimination, reprisals, reduction-in-force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal. The board may assign the initial hearing of an appeal to an administrative hearing officer for the receipt of evidence and the preparation of findings of fact, conclusions of law, and a recommended decision under chapter 28-32. The board's decision on an appeal shall resolve the issues presented between the employer and employee, and the board may order any needed remedy, including affirming, modifying, or reversing the employer's decision, vacating suspensions, directing back pay and adjustments to back pay, and reinstatement to the classified service.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 608

SENATE BILL NO. 2102  
(Committee on State and Federal Government)  
(At the request of the Central Personnel Division)

### CENTRAL PERSONNEL AND MERIT SYSTEM DUTIES

AN ACT to amend and reenact section 54-42-03 and subsection 1 of section 54-44.3-12 of the North Dakota Century Code, relating to the duties of the director of the central personnel division and the powers and duties of the merit system council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-42-03 of the North Dakota Century Code is amended and reenacted as follows:

54-42-03. Powers and duties. The director of the merit system council shall establish general policies, and rules, and regulations subject to the approval of the council, which are binding on the agencies affected. Those rules must cover such items as:

1. The positions to be covered by and exempted from the merit system.
2. ~~The establishing and maintenance of classification and compensation plans.~~
3. ~~Applications and examinations.~~
4. ~~3.~~ The establishing of lists of eligibles, certifications, and appointments.
5. ~~4.~~ Promotions, ~~transfers,~~ and demotions.
6. ~~5.~~ ~~Separations, tenure, and Reinstatements.~~
7. ~~Appeals.~~
8. ~~Attendance and leave.~~
9. ~~6.~~ Review of agency payrolls ~~by the merit system.~~
10. ~~7.~~ Any other procedures necessary for the administration of the personnel program on a merit basis.

The council has the authority to do all things necessary to carry out the provisions of this chapter, in regard to any agency designated by law to be subject to the complete merit system provided in this chapter. In addition thereto, the council shall provide such limited services as the legislative assembly by law shall direct in regard to a limited merit system or limited

merit system services for any agency of this state or its political subdivisions.

SECTION 2. AMENDMENT. Subsection 1 of section 54-44.3-12 of the North Dakota Century Code is amended and reenacted as follows:

1. Establish general policies, rules, and regulations, subject to the approval of the board, which are binding on the agencies affected, and which apply to the employees in the classified service. These rules must include the establishing and maintenance of classification and compensation plans. provide for:
  - a. Establishing and maintaining a classification plan.
  - b. Establishing and maintaining a compensation plan.
  - c. Promoting a consistent application of personnel policies.
  - d. Enhancing greater uniformity in matters relating to probationary periods, hours of work, leaves of absence, separations, transfers, disciplinary actions, grievance procedures, and performance management.
  - e. Ensuring fair treatment and compliance with equal employment opportunity and nondiscrimination laws.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 609

SENATE BILL NO. 2241  
 (Committee on State and Federal Government)  
 (At the request of the Office of Management and Budget)

### OFFICE OF MANAGEMENT AND BUDGET REPORTS

AN ACT to amend and reenact section 54-44-04 of the North Dakota Century Code, relating to the powers and duties of the director of the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44-04. Powers and duties of the director of the office of management and budget. The director of the office of management and budget, or such subordinate officer as ~~he~~ the director shall designate:

- ~~1. to 4. Repealed by S.L. 1965, ch. 350, § 20.~~
- ~~5.~~ Shall examine the budget affecting the legislative and judicial branches of the state government, but only for the purpose of determining the sufficiency of funds to meet the contemplated expenditures of these branches of state government or their officers or agencies.
- ~~6. and 7. Repealed by S.L. 1965, ch. 350, § 20.~~
- ~~8.~~ 2. Shall keep the general accounts, reflecting for each fund the resources and balance, together with current revenues and expenditures, and shall provide for an accrual accounting system.
- ~~9.~~ 3. Shall, acting as director of the office of the budget, process all claims for submittal to the office of management and budget, which may conduct the preaudit of all claims from the executive branch of the government before payment and the director shall conduct the current audit of all revenues, which must include the supervision of the collection of all moneys due the state.
- ~~10. Repealed by S.L. 1979, ch. 541, § 2.~~
- ~~11.~~ 4. Except as otherwise provided by law, shall prepare warrants for payment of all claims ~~from the executive branch of government, when approved by the office of the budget, and for payment of all claims from the judicial and legislative branches.~~
- ~~11-1.~~ 5. May, in anticipation of federal revenues to be received within fifteen days, prepare warrants to be signed by the state auditor in payment of duly authorized vouchers even though funds at such time

do not exist to honor the warrants. Warrants so issued shall be payable by the state treasurer out of any funds in the treasurer's hands other than sinking funds or funds dedicated by the Constitution of North Dakota for other purposes.

- ~~+2-~~ 6. Is vested with the duties, powers, and responsibilities involved in the development and installation of financial records and procedures for all state departments and agencies.
- ~~+2-1-~~ 7. Shall coordinate the development of accounting and financial related systems.
- ~~+2-2-~~ 8. Shall create an accounting manual and provide sufficient training of current and potential users concerning the functions and use of a statewide accounting and reporting system.
- ~~+2-3-~~ 9. Shall provide for the maintaining of accounting records which will identify the revenues and expenditures of the state in accordance with the requirements of the state's central accounting system.
- ~~+2-4-~~ 10. Shall provide for expenditures from general and special fund appropriations to be made in accordance with the requirements of the state's central accounting system.
- ~~+2-5-~~ 11. May provide for federal fund receipts and disbursements to be deposited and disbursed from a state federal fund in accordance with the requirements of the state's central accounting system.
- ~~+3-~~ 12. Shall conduct such interval audits of accounts in the several departments of the state as ~~he~~ the director shall deem necessary.
- ~~+4-~~ 13. Shall issue current reports to administrative officials concerning the status of revenue, expenditures, and appropriation accounts, and shall make periodic financial reports to the governor, administrative officials, the legislative assembly, and the public.
- ~~+4-1-~~ 14. Shall prepare on an annual basis comprehensive financial statements of the state of North Dakota.
- 15. ~~Shall submit a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget covering the activities of all the divisions of the office. In addition to any requirements established pursuant to section 54-06-04, the report must include a statement of the funds of the state, the revenues of the state, and public expenditures during the two preceding fiscal years.~~
- ~~+6-~~ Shall accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any, and also the amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.
- ~~+7-~~ Shall, when requested, give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or to the administration of his the office of management and budget.

- ~~16-~~ 16. Shall submit to the governor at the close of each business day, or at such times as the governor may request, a report showing the current condition of each fund and appropriation.
- ~~19-~~ 19. Shall keep an account with each organized county of the state in which each county must be charged with the amount of delinquent taxes due to the state; and with all sums levied in such county for state purposes; and must be credited with all sums paid into the state treasury on account of such taxes.
- ~~20-~~ 17. Shall keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when ~~he~~ the treasurer came into office, and with all moneys received by the state treasurer, and credit ~~him~~ the treasurer with all warrants drawn on and paid by ~~him~~ the treasurer.
- ~~21-~~ 18. Is vested with the duties, powers, and responsibilities involved in the operation of a centralized purchasing service.
- ~~22-~~ 19. Shall maintain and operate such supply rooms as may be found desirable to supply the several departments with office supplies and other commonly used commodities; however, this subsection may not be construed as authorizing the establishment of a warehousing system.
- ~~22-1-~~ 20. Shall distribute federal and state surplus property pursuant to sections 54-44-04.5 and 54-44-04.6.
- ~~23-~~ 21. Shall establish and operate a central duplicating service and central mechanical or electronic data processing facilities.
- ~~24-~~ 22. Shall perform such other duties as are or may be prescribed by law.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 610

SENATE BILL NO. 2123  
(Committee on Political Subdivisions)  
(At the request of the Office of Management and Budget)

**STATE SURPLUS PROPERTY TRANSFERS**

AN ACT to amend and reenact section 54-44-04.6 of the North Dakota Century Code, relating to transfers of state surplus property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44-04.6 of the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses surplus property surplus to its needs, whether originally obtained with state or federal other funds, and the person in charge believes that the state surplus property may be used by any other department, agency, institution, or political subdivision of the state.
2. The director of the office of management and budget shall dispose of the state surplus property in the following manner:
  - a. By transferring it to other state departments, institutions, or agencies without cost other than administrative expenses, which must be paid by the receiving agency. When the state surplus property was originally purchased under an appropriation other than from the general fund of the state, the agency receiving that state surplus property shall pay an amount equal to the fair market value of the property. Moneys received under this subdivision must be deposited in the fund from which the original purchases were made.
  - b. If not disposed of under subdivision a, title to the property must be transferred to political subdivisions without cost, except administrative expenses.
  - c. State surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.



3. If not disposed of under subdivision a or b subsection 2, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
- ~~3-~~ 4. All proceeds of property sold under this section, less sales costs, must be deposited in the general fund except as provided in subdivision a of subsection 2 received from the transfer or sale of state surplus property must be deposited into the fund from which the property was originally purchased, less administrative expenses.
- ~~4-~~ 5. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.

Approved March 14, 1991  
Filed March 15, 1991

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## CHAPTER 611

SENATE BILL NO. 2141  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### **STATE VEHICLE PURCHASE**

AN ACT to repeal section 54-44-04.8 of the North Dakota Century Code, relating to the purchase of state motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-44-04.8 of the North Dakota Century Code is repealed.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 612

HOUSE BILL NO. 1108  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### SPECIAL FUND ACCOUNTING

AN ACT to amend and reenact section 54-44-04.9 of the North Dakota Century Code, relating to financial report for any state department, agency, board, commission, college, university, or institution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44-04.9 of the North Dakota Century Code is amended and reenacted as follows:

54-44-04.9. Financial reporting. To ensure that sufficient information is provided to the office of management and budget for preparing an annual comprehensive financial statement and to ensure that the statewide accounting system and budget system are compatible, the person in charge of any department, agency, board, commission, college, university, or institution shall report all revenues and expenditures through the use of the statewide accounting system. The revenues and expenditures referred to in this section include all funds, including funds not appropriated. ~~Any changes to the present reporting system of the department, agency, board, commission, college, university, or institution necessary to comply with this section must be completed by July 1, 1989.~~

Notwithstanding any other provision of law, if any statutory provision provides for maintenance of a special fund in the state treasury the office of management and budget may require that it not be maintained as a separate fund in the state treasury but that it be maintained as a separate account for accounting purposes.

Any department, agency, board, commission, college, university, or institution that is not presently using the statewide payroll system shall provide the director with current salary information for all permanent and part-time employees when required to do so, in the format designed by the director.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 613

HOUSE BILL NO. 1219

(Committee on Transportation)

(At the request of the Office of Management and Budget)

### CIVIL AIR PATROL

AN ACT to create and enact a new section to chapter 54-45 of the North Dakota Century Code, relating to the civil air patrol; to amend and reenact sections 54-45-03, 65-06.1-01, and 65-06.1-02 of the North Dakota Century Code, relating to the civil air patrol; and to repeal sections 54-45-01, 54-45-02, and 54-45-04 of the North Dakota Century Code, relating to the civil air patrol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-45 of the North Dakota Century Code is created and enacted as follows:

"Civil air patrol" defined - Declaration of policy. "Civil air patrol" means the private nonprofit corporation chartered under federal law [36 U.S.C. 201-208]. It is the purpose of this chapter to declare the intent of the state of North Dakota to continue to provide financial support to the North Dakota wing of the civil air patrol to enable the civil air patrol to continue to provide to the state of North Dakota communications services, cadet training, disaster relief, search and rescue missions or assistance, and other related functions within the scope of the activity of the civil air patrol and administrative support personnel necessary to support these services and functions.

SECTION 2. AMENDMENT. Section 54-45-03 of the North Dakota Century Code is amended and reenacted as follows:

54-45-03. Expenditure of funds - Limitation. The commanding officer, North Dakota wing, civil air patrol, may issue vouchers covering all expenditures of funds of the department, and the state auditor shall issue his warrant therefor in the same manner as other state funds are expended. There may be expended from the moneys appropriated to the department only such sums as are needed to purchase adequate communications systems; the upkeep of said communications systems; maintenance of aircraft and vehicles owned by civil air patrol and provided that only such sums may be expended for procurement of equipment or replacement not otherwise obtainable by grant or gift from any other source expend appropriated grant funds as administered by the aeronautics commission. A report of expenditure of grant funds must be issued to the aeronautics commission annually. A general fund grant line item must be appropriated within the aeronautics commission's budget. These funds may be expended to support the mission of the civil air patrol as determined by the commanding officer. No funds may be expended for uniforms or personal equipment of any member of the civil air patrol or for the purchase of aircraft or motor vehicles; nor may any money be paid out of appropriated funds for any salaries, except for secretarial or administrative

support personnel. The commanding officer is authorized to apply for and accept federal funds for use in funding secretarial or administrative support personnel. All state equipment on inventory with the civil air patrol on the effective date of this Act and related to the mission of the civil air patrol must be transferred to the North Dakota wing of the civil air patrol.

SECTION 3. AMENDMENT. Section 65-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06.1-01. "Civil air patrol member" defined. "Civil air patrol member" means a volunteer civilian member of the ~~department of~~ civil air patrol engaged in official state activities authorized under chapter 54-45.

SECTION 4. AMENDMENT. Section 65-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

65-06.1-02. Civil air patrol members declared employees - Covered by ~~workmen's workers'~~ compensation. Civil air patrol members ~~shall be~~ are deemed employees of the ~~department of~~ civil air patrol and eligible for coverage under this title when engaged in official state activities authorized under chapter 54-45.

SECTION 5. REPEAL. Sections 54-45-01, 54-45-02, and 54-45-04 of the North Dakota Century Code are repealed.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 614

HOUSE BILL NO. 1104  
 (Committee on State and Federal Government)  
 (At the request of the Office of Management and Budget)

### RECORDS ADMINISTRATION

AN ACT to create and enact a new section to chapter 54-46 of the North Dakota Century Code, relating to continued confidentiality of records; to amend and reenact subsection 3 of section 54-44-11, sections 54-44.6-03, 54-46-03, 54-46-05, 54-46.1-01, 54-46.1-04, and 54-46.1-05 of the North Dakota Century Code, relating to records administration and management; and to repeal section 54-46.1-02 of the North Dakota Century Code, relating to transfer of equipment when the central microfilm unit was created.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 3 of section 54-44-11 of the North Dakota Century Code is amended and reenacted as follows:

3. The office of management and budget shall establish a state information services operating fund to be used for the procurement and maintenance of data processing equipment and supplies and, telecommunications equipment and supplies, and central microfilm unit equipment and supplies, and for providing data processing and, telecommunication, and central microfilm unit services to state departments and agencies.

SECTION 2. AMENDMENT. Section 54-44.6-03 of the North Dakota Century Code is amended and reenacted as follows:

54-44.6-03. State forms manager. The director of the office of management and budget ~~may appoint a state forms manager; or, in the alternative,~~ or an individual designated by the director shall serve as the state forms manager. The manager shall administer in the executive branch of state government the forms management program established by this chapter. The program must apply efficient and economical management methods to the creation and utilization of state forms.

SECTION 3. AMENDMENT. Section 54-46-03 of the North Dakota Century Code is created and enacted as follows:

54-46-03. State records administrator. The director of the office of management and budget ~~is hereby designated~~ or an individual designated by the director shall serve as the state records administrator, in this chapter referred to as the administrator. The administrator shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, and final disposition of state records.

\* NOTE: Section 54-44-11 was also amended by section 1 of Senate Bill No. 2131, chapter 615.

SECTION 4. AMENDMENT. Section 54-46-05 of the North Dakota Century Code is amended and reenacted as follows:

54-46-05. Duties of agency ~~or department~~ heads. The head of each agency ~~or department~~ shall:

1. Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.
2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.
3. Submit to the administrator, in accordance with the standards ~~established~~ adopted by ~~him~~ the administrator, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency. ~~The head of each agency also shall submit~~
4. Submit to the administrator lists of state records in ~~his~~ the custody ~~that~~ of the agency which are not needed in the transaction of current business and ~~that~~ which do not have administrative, legal, or fiscal value.
- ~~4.~~ 5. Cooperate with the administrator in the conduct of surveys made by ~~him~~ the administrator pursuant to ~~the provisions of~~ this chapter.
- ~~5.~~ 6. Comply with the rules, ~~regulations,~~ standards, and procedures ~~issued~~ adopted by the administrator.

SECTION 5. A new section to chapter 54-46 of the North Dakota Century Code is created and enacted as follows:

Continued confidentiality of records. The head of an agency may provide, and the administrator may receive, any record necessary to effect the purposes of this chapter without regard to the confidential or secret nature of the information in the record. However, the administrator and agents or employees of the administrator involved with records management under this chapter are subject to the same restrictions and penalties regarding the dissemination of the information as are the personnel of the agency involved.

SECTION 6. AMENDMENT. Section 54-46.1-01 of the North Dakota Century Code is amended and reenacted as follows:

54-46.1-01. Central microfilm unit. The ~~director of the office of management and budget,~~ as state records administrator, shall establish and maintain a central microfilm unit and microfilm any record of any state office, agency, or department in either the executive, legislative, or judicial branch of state government, if ~~he shall determine~~ the administrator determines the cost of such microfilming is reasonable in relation to the record's historical significance or the frequency and type of use of the record. Each office, agency, and department shall reimburse the central microfilm unit for the actual costs incurred in microfilming its records.

which collections must be deposited in the general fund in the state treasury. Expenditures required for the operation of the central microfilm unit must be made from the general fund and are limited to the amounts appropriated by the legislative assembly. The administrator shall deposit moneys received under this section in the information services operating fund. The administrator shall employ professional, technical, and clerical personnel as he deems the administrator determines to be necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, shall fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The central microfilm unit must be located in the state capitol. The administrator may perform microfilm services for the any state institutions institution and for any county, when they request the institution or county requests such services, and the administrator agrees that the request is consistent with good records management practices.

SECTION 7. AMENDMENT. Section 54-46.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-46.1-04. Duplicate storage of microfilm records. Whenever any record or document is copied or reproduced as provided in this chapter, the state records administrator shall provide for duplicate storage of such the photographic reproductions. The administrator may enter into contracts for duplicate storage services if, in his the administrator's judgment, such contracts are necessary for the safekeeping of photographic reproductions.

SECTION 8. AMENDMENT. Section 54-46.1-05 of the North Dakota Century Code is amended and reenacted as follows:

54-46.1-05. Restriction on purchases and contracts for microfilm equipment and services - Alternative services. No Except for the institutions and entities under the jurisdiction of the board of higher education, no state office, agency, or department located in the city of Bismarck may enter into any contract or agreement for the purchase or lease of any microfilm equipment or services without the express approval of the state records administrator. The administrator may authorize an office, agency, or department to make other arrangements for microfilm services if the central microfilm unit is unable to perform the services required or if, in the administrator's judgment, the special needs of the office, agency, or department justify such an authorization.

SECTION 9. REPEAL. Section 54-46.1-02 of the North Dakota Century Code is repealed.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 615

SENATE BILL NO. 2131  
(Committee on Appropriations)  
(At the request of the Office of Management and Budget)

### STATE PURCHASING OPERATING FUND

AN ACT to amend and reenact section 54-44-11 of the North Dakota Century Code, relating to the office of management and budget operating funds creation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-44-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44-11. Office's operating funds creation.

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. ~~Any surplus in this fund in excess of one hundred thousand dollars on June thirtieth of each year must be transferred to the state general fund-~~
2. The office of management and budget shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies.
3. The office of management and budget shall establish a state information services operating fund to be used for the procurement and maintenance of data processing equipment and supplies and telecommunications equipment and supplies and for providing data processing and telecommunication services to state departments and agencies.
4. The office of management and budget shall establish a state personnel training and development operating fund to be used for the coordination of employee training and career development data, supplies, equipment, and services and for providing or arranging necessary training and development programs to state departments and agencies. Any surplus in this fund in excess of twenty-five thousand dollars on June thirtieth of each year must be transferred to the state general fund.
5. Each office, agency, or institution provided with ~~purchasing~~, printing, information services, or personnel training services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of management and budget,

\* NOTE: Section 54-44-11 was also amended by section 1 of House Bill No. 1104, chapter 614.

based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices, agencies, and institutions must be deposited in the appropriate operating fund and must be expended in accordance with legislative appropriations.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 616

HOUSE BILL NO. 1096  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### **SAN HAVEN PROPERTY TRANSFER**

AN ACT to create and enact a new section to chapter 54-44 of the North Dakota Century Code, authorizing the selling, leasing, exchanging, or transferring of title of san haven properties by the director of the office of management and budget; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44 of the North Dakota Century Code is created and enacted as follows:

Director may sell, lease, exchange, or transfer title or use to all or part of the san haven properties. The director of the office of management and budget, with the approval of the governor, is authorized to sell, lease, exchange, or transfer title or use of any part or all of the san haven facilities and properties, located in sections nineteen, twenty-nine, and thirty, township one hundred sixty-two north, range seventy-two west, located in Rolette County, North Dakota, to the federal government or any public or private agency, organization, or business enterprise or any worthy undertaking, under the following provisions:

1. The transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
2. All required legal documents, papers, and instruments in any transaction must be reviewed and approved as to form and legality by the attorney general.
3. Any funds realized by any transaction must be deposited in the state's general fund.

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

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 617

HOUSE BILL NO. 1161  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### BUDGET REQUEST DUE DATES

AN ACT to amend and reenact section 54-44.1-13 of the North Dakota Century Code, relating to the date the budget requests for the legislative and judicial branches are submitted.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-13 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-13. Budget requests for legislative and judicial branches. The budget requests and expenditures for the legislative and judicial branches of this state are not subject to the provisions of this chapter and such budget requests must be submitted directly to the legislative assembly with informational copies of such budgets provided to the director of the budget not later than November eighth for the judicial branch and November fifteenth for the legislative branch in each even-numbered year preceding a session of the legislative assembly.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 618

SENATE BILL NO. 2242  
(Committee on Political Subdivisions)  
(At the request of the Lieutenant Governor)

### STATEWIDE ELECTRONIC COMMUNICATIONS NETWORK

AN ACT to create and enact a new subsection to section 54-44.2-02 of the North Dakota Century Code, relating to the duties of the information services division.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-44.2-02 of the North Dakota Century Code is created and enacted as follows:

Provide advice, general guidelines, and information to political subdivisions on the compatibility and interactive capacity of computers and other electronic information systems with the goal of developing a statewide compatible electronic communications network by 1996.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 619

HOUSE BILL NO. 1543  
(Representatives Dalrymple, Flaagan)  
(Senator Satrom)

### ACCOUNTING AND RECORDS SYSTEM GRANTS

AN ACT to create and enact a new section to chapter 54-44.2 of the North Dakota Century Code, relating to a grant program to assist counties in developing a uniform accounting and records maintenance system; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.2 of the North Dakota Century Code is created and enacted as follows:

Accounting and records maintenance grant program. The information services division shall establish a grant program to assist counties in developing a uniform accounting and records maintenance system. A county may apply to the information services division for a grant of up to five thousand dollars, which must be used for the purchase of data processing equipment or for contracting for training on the use of data processing equipment. A county awarded a grant under this section shall match or exceed the grant amount with county moneys. Any data processing equipment purchased and any training contracted for with funds granted under this section must be approved by the information services division after consultation with the North Dakota association of counties. The information services division, after consultation with the North Dakota association of counties, shall establish guidelines for the review of grant applications and the distribution of grants.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much thereof as may be necessary, to the information services division for the purpose of providing grants under section 1 of this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 620

HOUSE BILL NO. 1026  
(Legislative Council)  
(Advisory Commission on Intergovernmental Relations)

### **MERIT SYSTEM EFFECT FOR COUNTIES**

AN ACT to amend and reenact section 54-44.3-12.1 of the North Dakota Century Code, relating to the effective date of compensation plan revisions for county employees covered by the state merit system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.3-12.1 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.1. Revisions to compensation plan. Revisions to the compensation plan may only be made on July first, following the close of a regular legislative session, except that new classifications may be added to the compensation plan during a biennium when deemed necessary by the director. Revisions to the compensation plan do not become effective for county employees covered by the plan until January first of the first full calendar year following the revision. Revisions to the compensation plan may only be made to the extent the legislative assembly appropriates funds to implement such plans.

Approved March 25, 1991  
Filed March 26, 1991

# CHAPTER 621

SENATE BILL NO. 2130  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

## STATE BIDDING PROCEDURE PUBLICATION

AN ACT to amend and reenact section 54-44.4-05 of the North Dakota Century Code, relating to publication of procedures on competitive bidding on purchases by the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive bidding on purchases. Except as otherwise provided in section 44-08-01 and section 25-16.2-02, purchasing contracts must be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. ~~The office of management and budget shall publish at least once per year in each official county newspaper in the state the procedures to be followed to sell goods and materials to state agencies, departments, and institutions.~~ Each bid received, with the name of the bidder, must be recorded.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 622

HOUSE BILL NO. 1285  
(Representatives Ring, Schindler, Pyle)  
(Senators Thane, Mushik, Robinson)

### STATE USE OF RECYCLED PAPER

AN ACT to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to purchase of paper or paper products containing recycled material for use by state entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Purchase of recycled paper products. The office of management and budget, and any state agency or institution that has authority to purchase products, shall ensure that beginning July 1, 1993, at least ten percent of the total volume of paper and paper products being purchased for state agencies and institutions contain at least twenty-five percent recycled material; beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; and beginning January 1, 2000, at least eighty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 623

SENATE BILL NO. 2134  
(Committee on Appropriations)  
(At the request of the Office of Intergovernmental Assistance)

### COMMUNITY DEVELOPMENT LOAN FUND

AN ACT to create and enact a new section to chapter 54-44.5 of the North Dakota Century Code, relating to a continuing appropriation to the office of intergovernmental assistance; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.5 of the North Dakota Century Code is created and enacted as follows:

Continuing appropriation. There is hereby appropriated as a standing and continuing appropriation to the office of intergovernmental assistance for the purpose of carrying out the provisions of chapter 54-44.5 of the North Dakota Century Code, including the administration of such provisions, all moneys returned as repayments of federal or other funds granted under the community development loan fund, and all earnings from the investment of such moneys, which may be received from time to time by the office. Administrative expenses may only be charged against such moneys to the extent permitted by federal law or regulations.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 1990.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 624

SENATE BILL NO. 2129  
(Committee on State and Federal Government)  
(At the request of the Office of Management and Budget)

### OPTICAL DATA RECORD STORAGE

AN ACT to create and enact a new section to chapter 54-46.1 of the North Dakota Century Code, relating to optical data storage processes; and to amend and reenact section 31-08-01.1, subsections 3 and 4 of section 41-09-42, subsection 2 of section 41-09-43, sections 54-24-09, 54-46.1-03, 54-46.1-06, and subsection 5 of section 55-02-01.2 of the North Dakota Century Code, relating to optical data storage of records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-08-01.1 of the North Dakota Century Code is amended and reenacted as follows:

31-08-01.1. ~~Photographic~~ Certain copies of business and public records admissible in evidence. If any business, institution, member of a profession or calling, or any department or agency of government in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical disk, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.

SECTION 2. AMENDMENT. Subsections 3 and 4 of section 41-09-42 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection 2. Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection 2 of section 41-09-40,

including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection 2 unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he the filing officer has retained a microfilm or other photographic or optical disk record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he the filing officer physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection 6 shall be retained.

4. Except as provided in subsection 7, a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy or optical disk record thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

\* SECTION 3. AMENDMENT. Subsection 2 of section 41-09-43 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. On presentation to the filing officer of such a termination statement, he must the filing officer shall note it in the index. If he the filing officer has received the termination statement in duplicate, he the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic or optical disk record of the financing statement, and of any related continuation statement, statement of assignment, and statement of release, he the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if he the filing officer has no such record, he the filing officer may remove them from the files at any time after one year after receipt of the termination statement.

SECTION 4. AMENDMENT. Section 54-24-09 of the North Dakota Century Code is amended and reenacted as follows:

54-24-09. Distribution of certain state publications for certain libraries required. The state purchasing and printing agent shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. Should expense and limited supply of state publications, particularly audiovisual items, make strict compliance with the

\* NOTE: Section 41-09-43 was also amended by section 19 of Senate Bill No. 2024, chapter 449.

depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, no less than two copies must be provided to the state library by each agency. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the state purchasing and printing agent, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its own use two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical board, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota ~~academic, public, and special~~ libraries shall have the opportunity to receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

SECTION 5. A new section to chapter 54-46.1 of the North Dakota Century Code is created and enacted as follows:

Optical data storage authorized. Any public entity may adopt and use an optical data storage process for the storage of records by optical disk mediums when the use of the process is consistent with good records management practices. The state records administrator may prescribe such practices, except for specialized commercial data bases such as those used in libraries. As used in this chapter, an optical data storage process includes the optical disk software and hardware used in that process and the records stored by that process after the entity involved has established a records management program with respect to optical data storage.

SECTION 6. AMENDMENT. Section 54-46.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-46.1-03. Reproductions admissible in evidence - Preparation of ~~enlarged~~ copies. A photographic, microphotographic, or microfilm copy of any record, a paper or microfilm reproduction of any record stored by optical disk, or a certified copy thereof, is admissible as evidence in any court or proceeding and shall have has the same force and effect as though the original record has been produced and proved. It is the duty of the ~~The~~ custodian of such records to shall prepare enlarged copies of the microphotographic or microfilm copies of the records and paper copies of

records stored by optical disk and shall document the accuracy of the processes whenever their production is required by law.

SECTION 7. AMENDMENT. Section 54-46.1-06 of the North Dakota Century Code is amended and reenacted as follows:

54-46.1-06. Adoption of rules. The state records administrator may adopt rules to establish standard procedures and practices in the development and use of the central microfilm unit, including the proper use of any optical data storage process.

SECTION 8. AMENDMENT. Subsection 5 of section 55-02-01.2 of the North Dakota Century Code is amended and reenacted as follows:

5. Catalog, index, ~~or~~ microfilm, or store by optical disk medium all of the collections of the board for the more convenient references of all persons who have occasion to consult the same.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 625

SENATE BILL NO. 2194  
(Committee on State and Federal Government)  
(At the request of the Governor)

### GOVERNMENT AGENCY EMPLOYEE EXCHANGES

AN ACT to amend and reenact sections 54-51-04 and 54-51-09 of the North Dakota Century Code, relating to the duration of exchange for the interchange of government employees and the salary or wage of those employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-51-04 of the North Dakota Century Code is amended and reenacted as follows:

54-51-04. Duration of exchange. The period of individual assignment or detail under an interchange program may not exceed ~~twelve months, nor may any person be assigned or detailed for more than twelve months during any thirty six month period~~ four years. Details relating to any matter covered in this chapter may be the subject of an agreement between the sending and receiving agencies. Elected officials may not be assigned from a sending agency nor detailed to a receiving agency.

SECTION 2. AMENDMENT. Section 54-51-09 of the North Dakota Century Code is amended and reenacted as follows:

54-51-09. Status of employees of other governments. The following provisions control the status of any employees within the state ~~by virtue of~~ under this chapter:

1. When any unit of government of this state acts as a receiving agency, employees of the sending agency who are assigned under authority of this chapter may be considered to be on detail to the receiving agency.
2. Appointments of persons so assigned may be made without regard to the laws or regulations governing the selection of employees of the receiving agency. ~~Such~~ The person shall be in the unclassified service of the state.
3. Employees who are detailed to the receiving agency may not by virtue of ~~such the~~ detail be considered to be employees thereof, except as provided in subsection 4, ~~nor may they be paid a salary or wage by the receiving agency during the period of their detail~~. The supervision of the duties of ~~such those~~ employees during the period of detail may be governed by agreement between the sending agency and the receiving agency.

4. Any employee of a sending agency assigned in this state who suffers disability or death as a result of personal injury arising out of and in the course of such the assignment, or sustained in the performance of duties in connection therewith, must be treated as an employee for the purpose of the receiving agency's employee compensation program, ~~as an employee, as defined in such act, who has sustained such injury in the performance of such duty,~~ but may not receive benefits ~~under that act~~ for any period for which ~~he~~ the employee elects to receive similar benefits as an employee under the sending agency's employee compensation program.
5. A receiving agency may with the agreement of the sending agency pay an employee from a sending agency a full or supplemental salary or wage not to exceed the appropriate pay for an equivalent position in the receiving or sending agency.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 626

SENATE BILL NO. 2093  
(Committee on Human Services and Veterans Affairs)  
(At the request of the National Guard)

### NATIONAL GUARD SECURITY AND FIREFIGHTER RETIREMENT

AN ACT to create and enact a new subsection to section 54-52-01 and a new section to chapter 54-52 of the North Dakota Century Code, relating to the definition of a national guard security officer or firefighter and contributions under the public employees retirement system; to amend and reenact section 37-03-04, subsection 3 of section 54-52-05, subsections 3 and 4 of section 54-52-17, and subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code, relating to determination by the adjutant general of national guard membership requirements, retirement benefits of national guard security officers or firefighters under the public employees retirement system, and the retiree health benefits fund; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-03-04 of the North Dakota Century Code is amended and reenacted as follows:

37-03-04. Assistance and expense of office - Payment of accounts. The adjutant general may have such necessary clerks, instructors, caretakers, employees, and laborers, within the limitations prescribed in appropriations made by the legislative assembly from time to time, as may be required. The adjutant general shall determine national guard membership requirements for employment. The expense of the adjutant general's department, including the salary of the adjutant general and of the assistant adjutant general, clerkhire, the cost of furniture, light, fuel, and postage, and other office expenses, must be paid from the general fund by warrants drawn by the state auditor on the state treasurer upon the order of the governor.

SECTION 2. A new subsection to section 54-52-01 of the 1990 Special Supplement to the North Dakota Century Code is created and enacted as follows:

"National guard security officer or firefighter" means a participating member who is:

- a. A security police employee of the North Dakota air national guard and who is a member of the national guard; or
- b. A firefighter employee of the North Dakota air national guard and who is a member of the national guard.

SECTION 3. AMENDMENT. Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay the employee contributions required by subsection 2 and section 54-52-06.1 for all compensation earned after June 30, 1983, and may pay the employee contributions required by section 4 of this Act for all compensation earned after June 30, 1991. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they shall not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by July 15, 1983, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Contribution by national guard security officers or firefighters - Employer contribution. Each national guard security officer or firefighter who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The national guard security officer's or firefighter's employer shall contribute an amount equal to five and eighty-seven hundredths percent of the monthly salary of the employee. The employer's contribution must be paid from funds appropriated for salary or from any other funds available for such purposes. If the security officer's or firefighter's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required national guard security officer's or firefighter's assessment.

\* SECTION 5. AMENDMENT. Subsections 3 and 4 of section 54-52-17 of the 1990 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Retirement dates ~~must be~~ are defined as follows:
- a. Normal retirement date, except for a national guard security officer or firefighter is:

\* NOTE: Section 54-52-17 was also amended by section 1 of House Bill No. 1185, chapter 631, and by section 3 of House Bill No. 1186, chapter 627.

- (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
  - (2) When the member has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.
- b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least five consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
- c. Postponed retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after attaining the age of sixty-five years. For a national guard security officer or firefighter, postponed retirement date is the first day of the month next following the month in which the national guard security officer or firefighter actually severs or has severed employment after attaining the age of fifty-five years.
- ~~c-~~ d. Early retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed five years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least five years of eligible employment.
- ~~d-~~ e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. A member is eligible to receive disability retirement benefits only if the member:
- (1) Became disabled during the period of eligible employment;
  - (2) Is determined eligible for benefits under the Social Security Act as amended; and
  - (3) Applies for disability retirement benefits within twelve months of the date the member terminates employment.
4. Retirement The board shall calculate retirement benefits must be calculated by the board as follows:
- a. Normal retirement benefits for all retirees, except supreme and district court judges, ~~reaching~~ and national guard security officers or firefighters normal retirement date must be equal

an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which must be determined as follows:

- (1) Service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of service employment.
  - (2) Prior service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of prior service employment.
  - (3) All participants who retired before July 1, 1989, are entitled to benefits calculated at one and sixty-five hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, 1989.
- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date must be equal in an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three percent of final average salary multiplied by the first ten years of judicial service, two percent of final average salary multiplied by the second ten years of judicial service, and one percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
  - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Normal retirement benefits for all national guard security officers or firefighters under the public employees retirement system reaching normal retirement date for national guard security officers or firefighters is an annual amount payable monthly comprised of a benefit as defined in this chapter, determined as follows:
- (1) Service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of service employment.
  - (2) Prior service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of prior service employment.
- d. Postponed retirement benefits must be are calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.

- d. e. Early retirement benefits must be are calculated as for normal retirement benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- e. f. Disability retirement benefits must be are seventy percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

\* SECTION 6. AMENDMENT. Subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. The board, as trustee of the fund and in exclusive control of its administration, shall:
  - a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended under subsection 6 of section 54-52-04.
  - b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

SECTION 7. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1991.

Approved March 18, 1991  
Filed March 19, 1991

\* NOTE: Section 54-52.1-03.2 was also amended by section 1 of House Bill No. 1188, chapter 634.

## CHAPTER 627

HOUSE BILL NO. 1186  
 (Committee on State and Federal Government)  
 (At the request of the Public Employees Retirement System)

### JUDICIAL RETIREMENT

AN ACT to amend and reenact sections 54-52-02.6, 54-52-06.1, 54-52-17, subsection 1 of section 54-52.1-03.2, and 54-52.1-03.3 of the North Dakota Century Code, relating to retirement benefits for supreme and district court judges and refunds of contributions under the public employees retirement system and the inclusion of members of the judges retirement program as recipients of retiree health benefits under the uniform group insurance program; to provide an expiration date; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52-02.6 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.6. Repurchase of past service upon reemployment. An individual who terminates participation in the plan may elect to receive a refund of ~~contributions~~ the member's account balance under subsection 7 of section 54-52-17 and thus forfeit all rights to plan benefits. An individual may, within one hundred eighty days of reemployment, elect to repurchase the forfeited past service in accordance with rules established by the board.

SECTION 2. AMENDMENT. Section 54-52-06.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution. Each judge of the supreme or district court who is a member of the public employees retirement system must be assessed and required to pay monthly five percent of the judge's monthly salary. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. The state shall contribute an amount equal to ~~fourteen~~ twelve and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution must be paid from its funds appropriated for salary, or from any other funds available for such purposes. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

\* SECTION 3. AMENDMENT. Section 54-52-17 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17. Formulation of plan. Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive

\* NOTE: Section 54-52-17 was also amended by section 1 of House Bill No. 1185, chapter 631, and by section 5 of Senate Bill No. 2093, chapter 626.

a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. Retirement benefits must be are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed must be are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary must be is the average salary for the total months of employment.
3. Retirement dates must be are defined as follows:
  - a. Normal retirement date is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
    - (2) When the member has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.
  - b. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after attaining the age of sixty-five years.
  - c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed five years of eligible employment.
  - d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. A member is eligible to receive disability retirement benefits only if the member:
    - (1) Became disabled during the period of eligible employment;
    - (2) Is determined eligible for benefits under the Social Security Act as amended; and
    - (3) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

4. Retirement The board shall calculate retirement benefits must be calculated by the board as follows:
- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date must be equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which must be determined as follows:
    - (1) Service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of service employment.
    - (2) Prior service benefit equals one and sixty-five hundredths percent of final average salary multiplied by the number of years of prior service employment.
    - (3) All participants who retired before July 1, 1989, are entitled to benefits calculated at one and sixty-five hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, 1989.
  - b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date must be equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:
    - (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and one-fourth percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
    - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
  - c. Postponed retirement benefits must be are calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.
  - d. Early retirement benefits must be are calculated as for normal retirement benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
  - e. Disability retirement benefits must be are seventy percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and



by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

5. Upon termination of employment after completing five years of eligible employment but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued normal retirement benefits.
6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to any beneficiary, other than the member's surviving spouse, designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary other than the member's surviving spouse under this section, the surviving spouse of the member may select one of the following optional forms of payment:
  - a. A lump sum payment of the member's retirement account as of the date of death.
  - b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.
  - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.
8. If a member who is receiving retirement benefits or the member's surviving spouse who is receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to such spouse, the member's surviving beneficiary, if any, or the member's estate.
9. The board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:
  - a. Joint and survivor, with fifty percent or one hundred percent options.
  - b. Level social security option, which shall be available only to early retirees.

c. Life with five-year or ten-year certain options.

Unless a member requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension.

SECTION 4. AMENDMENT. Subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and ~~one~~ three percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52. The board, as trustee of the fund and in exclusive control of its administration, shall:
  - a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended under subsection 6 of section 54-52-04.
  - b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

\* SECTION 5. AMENDMENT. Section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
  - a. A member of the highway patrolmen's retirement system ~~or the public employees retirement system~~ receiving retirement benefits, ~~or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-11 or 54-52-17.~~
  - b. ~~The surviving spouse of a~~ A member of the highway patrolmen's retirement system ~~or the public employees retirement system~~

\* NOTE: Section 54-52.1-03.3 was also amended by section 2 of House Bill No. 1188, chapter 634, and by section 2 of Senate Bill No. 2507, chapter 633.

receiving retirement benefits, or the surviving spouse of a member of the public employees retirement system who was eligible to receive, or was receiving, retirement benefits, under section ~~39-03-111~~ or 54-52-17.

- c. A retired judge receiving retirement benefits under the retirement program established under chapter 27-17, or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-01.
2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to three dollars multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system ~~or~~, the public employees retirement system, or the judges retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four.
3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. However, if the allowable credit exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.

SECTION 6. EXPIRATION DATE. Sections 2 and 4 of this Act are effective through June 30, 1996, and after that date are ineffective.

SECTION 7. APPLICATION OF ACT. Section 3 of this Act relating to benefits for supreme and district court judges applies to benefits payable after June 30, 1991.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 628

SENATE BILL NO. 2078  
(Legislative Council)

(Interim Committee on Public Employees Retirement Programs)

### STATE INVESTMENT BOARD

AN ACT to amend and reenact sections 1 and 15 of chapter 667 of the 1989 Session Laws of North Dakota, section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota, section 21-10-02.1 of the North Dakota Century Code as amended by section 6 of chapter 667 of the 1989 Session Laws of North Dakota, and section 54-52-04 of the North Dakota Century Code as amended by section 11 of chapter 667 of the 1989 Session Laws of North Dakota, relating to the establishment of the North Dakota state retirement and investment office; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. The new chapter to title 54 of the North Dakota Century Code as created by section 1 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

North Dakota state retirement and investment office. A state agency The state retirement and investment office is hereby created to coordinate the activities of the state investment board and teachers' fund for retirement; and must be known as the state retirement and investment office.

Governing authority. The state investment board shall govern the state retirement and investment office is governed by an administrative board that consists of the governor or designee of the governor, state treasurer, and the president of the board of trustees of the teachers' fund for retirement. The administrative state investment board is responsible for overseeing and operating the agency and may do all things necessary to coordinate the activities of the state investment board and the teachers' fund for retirement. The board of trustees of the teachers' fund for retirement board and the state investment board shall maintain their legal identities and authority as otherwise provided by law.

State retirement and investment fund - Cost of operation of agency. A special fund known as the "state retirement and investment fund" must be is established for the purpose of defraying administrative expenses of the state retirement and investment office. The actual amount of administrative expenses incurred by the state retirement and investment office must be paid from the respective funds listed under section 21-10-06 and are hereby appropriated to the state retirement and investment fund in proportion to the services rendered for each fund as estimated by the administrative state investment board. The amount necessary to pay all administrative expenses of the state retirement and investment office must be paid from the state retirement and investment fund in accordance with the agency's appropriation

authority. Any interest income earned on the state retirement and investment fund must be credited to the fund.

SECTION 2. AMENDMENT. Section 21-10-01 of the North Dakota Century Code as amended by section 4 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

21-10-01. State investment board - Membership - Term - Compensation - Advisory council.

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the ~~chairperson~~ director of the workers compensation bureau, the commissioner of insurance, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members of the public employees retirement system board as selected by that board. The members of the state investment board, except elected and appointed officials, are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.
2. The state investment board may establish an advisory council ~~comprised~~ composed of individuals who are experienced and knowledgeable in the field of investments. The state investment board shall determine the responsibilities of the advisory council. Members of the advisory council are entitled to receive the same compensation as provided the members of the advisory board of the Bank of North Dakota and necessary mileage and travel expenses as provided in sections ~~54-06-09 and~~ 44-08-04 and 54-06-09.

SECTION 3. AMENDMENT. Section 21-10-02.1 of the North Dakota Century Code as amended by section 6 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

21-10-02.1. Board - Policies - ~~Investment~~ on investment goals and objectives and asset allocation.

1. The board governing body of each fund enumerated in section 21-10-06 shall establish policies on investment goals and objectives and asset allocation for the funds enumerated in section ~~21-10-06~~ each respective fund. The policies must provide for:
  - ~~1-~~ a. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.
  - ~~2-~~ b. Acceptable rates of return, liquidity, and levels of risk.
  - ~~3-~~ c. Long-range asset allocation goals.
  - ~~4-~~ d. Guidelines for the selection and redemption of investments.
  - ~~5-~~ e. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.

- 6- f. The type of reports and procedures to be used in evaluating performance.
2. Each fund enumerated in section 21-10-06 shall submit to the board the fund's policies on investment goals and objectives. The state investment board shall develop an The asset allocation plan for each fund in accordance with the investment goals and objectives of the fund, subject to the approval of the governing body of the fund, to be effective, must be approved by the governing body of that fund and the state investment board by January first of each year. If the asset allocation is not approved, the previous asset allocation remains effective. The governing body of each fund shall use the staff and consultants of the retirement and investment office in developing asset allocations and investment policies.

SECTION 4. AMENDMENT. Section 54-52-04 of the North Dakota Century Code as amended by section 11 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

54-52-04. Board authority.

1. The board shall adopt rules necessary to implement this chapter, and to manage the system, subject to the limitations of this chapter. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota.
2. The board shall appoint an executive director to serve at its discretion. The executive director shall be bonded by the state bonding fund in the amount required by the board and shall perform such duties as assigned by the board.
3. The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the staff, subject to the approval of the board.
4. The board shall arrange for actuarial and medical advisers for the system. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall make a biennial valuation of the liabilities and reserves of the system and a determination of the contributions required by the system to discharge its liabilities and pay the administrative costs under this chapter, and to recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost method, to maintain the system on an actuarial reserve basis; once every even-numbered year make a general investigation of the actuarial experience under the system including mortality, retirement, employment turnover, and other items required by the board, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; and perform other duties as may be assigned by the board.

5. The state shall provide the board with the retirement systems office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel.
6. The funds necessary for paying prior service and service benefits, consultant fees, and making withdrawal payments and refunds are hereby appropriated from the retirement fund for those purposes. The amount necessary to pay the consulting fees and health insurance benefits related to the uniform group insurance program is hereby appropriated from the insurance premiums received by the board.
7. The board shall administer chapters 39-03.1, 54-52.1, and 54-52.2.
8. The board annually shall report in accordance with section 21-10-06.1 the investment performance of the fund and distribute a copy to each participant.

SECTION 5. AMENDMENT. Section 15 of chapter 667 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1993, and after that date is ineffective.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 629

SENATE BILL NO. 2094  
(Committee on State and Federal Government)  
(At the request of the Board of Higher Education)

### **DEVELOPMENT FOUNDATION EMPLOYEE DISTRIBUTION**

AN ACT to create and enact a new subsection to section 54-52-04 of the North Dakota Century Code, relating to the powers and duties of the public employees retirement board to purchase annuities for employees of development foundations associated with public institutions of higher education who become ineligible to continue in the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-52-04 of the North Dakota Century Code is created and enacted as follows:

The board may distribute the employer contribution and applicable interest for any employee of any development foundation associated with a public institution of higher education in this state who may previously have been included in the public employees retirement system while employed by such foundation. Such employee is entitled to have that employee's contribution and the contribution of the development foundation, with interest.

Approved March 14, 1991  
Filed March 15, 1991



## CHAPTER 630

HOUSE BILL NO. 1190  
(Committee on State and Federal Government)  
(At the request of the Public Employees Retirement System)

### PERS REVISIONS

AN ACT to create and enact two new sections to chapter 54-52 and a new subsection to section 54-52.1-03.2 of the North Dakota Century Code, relating to retirement records and federal benefit limitations under the public employees retirement system plan and the retiree health benefits fund; and to amend and reenact sections 39-03.1-10, 39-03.1-10.1, 54-52-02.9, 54-52-06, 54-52-17.4, 54-52-23, and 54-52.1-01 of the North Dakota Century Code, relating to military service credit, participation by temporary employees, purchase of additional service credit, plan modifications under the public employees retirement system, and definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10. Contributions by the state. The state shall contribute to the fund a sum equal to sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution. The state shall pay the associated employer contribution for those members who elect to exercise their rights under subsection 3 of section 39-03.1-10.1.

SECTION 2. AMENDMENT. Section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-10.1. Refund and repurchase of contributions. A Except as provided in subsection 3, a contributor whose employment has been terminated for at least thirty days is entitled to a refund of or to repurchase contributions as follows:

1. a. If the contributor has less than ten years of service at termination of employment, the refund is payable on application of the contributor, or automatically in January of the following calendar year.
- b. If the contributor has at least ten years of service at the date of termination, the contributor may apply for a refund of accumulated deductions instead of retirement benefits. By receiving the refund of accumulated deductions under this subdivision, the contributor forfeits all months of service to

the date of refund and cannot use those months for any future benefit calculations.

2. A contributor who was paid a refund under subdivision a of subsection 1 may, upon reemployment, elect to repurchase months of service lost to the date of refund. The election to repurchase must be made within ninety days of reemployment and repayment must begin within twelve months of reemployment. The repayment may be made in a lump sum or by periodic payments that each year include at least ten percent of the repayment principal amount. The board shall establish an interest rate to be charged on periodic payments. If the contributor's death occurs before completion of the repurchase, the contributor's spouse may, within ninety days of the contributor's death, complete the repurchase. Benefits payable to the surviving spouse cannot be paid until the repurchase has been completed.
3. A member may elect to purchase qualified military service credit pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.] at any time prior to retirement by submitting a valid application and paying the member portion pursuant to rules adopted by the board. It is the responsibility of the applicant to supply any documentation required by the board.

SECTION 3. AMENDMENT. Section 54-52-02.9 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.9. Participation by temporary employees. A temporary employee may elect, within one hundred eighty days of beginning employment, to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to ~~nine~~ eight and twelve-hundredths percent times the temporary employee's present monthly salary. The temporary employee shall also pay monthly to the retiree health benefit fund established under section 54-52.1-03.2 one percent times the temporary employee's present monthly salary. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee. A temporary employee may not purchase additional credit under section 54-52-17.4.

\* SECTION 4. AMENDMENT. Section 54-52-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit shall contribute an amount equal to four and twelve-hundredths percent of the monthly salary or wage of a participating member. For those members who elect to exercise their rights under subsection 3 of section 54-52-17.4, the employing governmental unit, or in the case of a member not presently under covered employment the most recent employing governmental unit, shall pay the associated employer contribution. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit

\* NOTE: Section 54-52-06 was also amended by section 13 of Senate Bill No. 2073, chapter 600.

shall pay the contribution monthly such contribution, or in the case of an election made pursuant to subsection 3 of section 54-52-17.4 a lump sum, into the retirement fund from its funds appropriated for payroll and salary or any other funds available for such these purposes. Any governmental unit failing to pay such the contributions monthly, or in the case of an election made pursuant to subsection 3 of section 54-52-17.4 a lump sum, is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due. The board shall report to each session of the legislative assembly, or such a committee as may be designated by the legislative council to hear such the report in the interim between legislative sessions, the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

\* SECTION 5. AMENDMENT. Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.4. Purchase of additional credit.

1. A participating member may elect to purchase credit, within one hundred eighty days of beginning eligible employment or by December 31, ~~1989~~ 1991, whichever is later, for years of service and prior service for which the participating member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service:
  - a. Active employment in the armed forces of the United States, except as provided in subsection 3, for up to four years of credit.
  - b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws, from July 1, 1977, to the date the eligible employee became a participating member of the public employees retirement system. However, participating members who were eligible, under section 54-52-19.2, to repurchase prior service credit forfeited by withdrawal from the predecessor plan to the public employees retirement system are not eligible to purchase that prior service credit under this section.
2. The participating member may purchase credit under this section by paying to the board an amount equal to ~~nine~~ eight and

\* NOTE: Section 54-52-17.4 was also amended by section 1 of Senate Bill No. 2507, chapter 633.

twelve-hundredths percent, times the participating member's monthly salary on the date of the participating member's election to purchase, times the number of months of credit being purchased, plus interest at a rate determined by rules established by the board. The participating member shall also pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the participating member's present monthly salary times the number of months of credit being purchased. This contribution must be recorded as a member contribution pursuant to section 54-52.1-03.2.

3. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Veterans' Reemployment Rights Act [Pub. L. 93-508; 88 Stat. 1594; 38 U.S.C. 2021 et seq.]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary, times the number of months of credit being purchased, plus interest at a rate determined by the board. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03 one percent times the member's present monthly salary times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 6. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Employment records. The years of service and prior service credit for each member as indicated in the records of the public employees retirement system as of July 1, 1991, are deemed correct and recognized as creditable years of service and prior service credit for purposes of calculating retirement benefits under this chapter and may not be reduced. However, the records may be corrected to reflect additional months of creditable service and prior service credit upon proper verification.

SECTION 7. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Benefit limitations. Benefits with respect to a member of the public employees retirement system on or after January 1, 1990, may not exceed the maximum benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] for governmental plans. This section constitutes an election under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] with respect to a member who first became a member before January 1, 1990.

SECTION 8. AMENDMENT. Section 54-52-23 of the North Dakota Century Code is amended and reenacted as follows:

54-52-23. Savings clause - Internal revenue service Plan modifications. If the internal revenue service does not approve of certain sections or phraseology of certain sections board determines that any section of this chapter as being in compliance with the does not comply with

applicable federal statutes or rules governing the internal revenue service, the board in the adoption of the plan shall adopt such appropriate terminology with respect to such sections that section as will comply therewith with those federal statutes or rules, subject to the approval of the committee on public employees retirement programs. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

SECTION 9. AMENDMENT. Section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement board.
2. "Carrier" means:
  - a. For the hospital benefits coverage, an insurance company authorized to do business in the state, or a nonprofit hospital service association, or a prepaid group practice hospital care plan authorized to do business in the state, or the state if a self-insurance plan is used for providing hospital benefits coverage.
  - b. For the medical benefits coverage, an insurance company authorized to do business in the state, or a nonprofit medical service association, or a prepaid group practice medical care plan authorized to do business in the state, or the state if a self-insurance plan is used for providing medical benefits coverage.
  - c. For the life insurance benefits coverage, an insurance company authorized to do business in the state.
3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, and includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, district health units, and school districts.
4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year.

5. "Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter 26.1-18.
6. "Hospital benefits coverage" means a plan which either provides coverage for, or pays, or reimburses expenses for hospital services incurred in accordance with the uniform contract.
7. "Life insurance benefits coverage" means a plan which provides both term life insurance and accidental death and dismemberment insurance in amounts determined by the board, with a minimum of one thousand dollars provided for the term life insurance portion of the coverage.
8. "Medical benefits coverage" means a plan which either provides coverage for, or pays, or reimburses expenses for medical services in accordance with the uniform contract.
9. "Member contribution" means the payment by the member into the retiree health benefits fund pursuant to sections 54-52-02.9 and 54-52-17.4.
10. "Member's account balance" means the member's contributions plus interest at the rate set by the board.
11. "Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

SECTION 10. A new subsection to section 54-52.1-03.2 of the North Dakota Century Code is created and enacted as follows:

If a member terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. If a member's account balance is withdrawn, the member relinquishes all rights to benefits under the retiree health benefits fund.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 631

HOUSE BILL NO. 1185  
(Committee on State and Federal Government)  
(At the request of the Public Employees Retirement System)

### PERS BENEFITS CALCULATION

AN ACT to amend and reenact section 54-52-17 of the North Dakota Century Code, relating to eligibility for and computation of disability retirement benefits, and computation of normal retirement benefits under the public employees retirement system; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-52-17 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17. Formulation of plan. Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. Retirement benefits ~~must be~~ are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed ~~must be~~ are excluded in arriving at the thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than thirty-six months at the normal retirement date, the final average salary ~~must be~~ is the average salary for the total months of employment.
3. Retirement dates ~~must be~~ are defined as follows:
  - a. Normal retirement date is:
    - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

\* NOTE: Section 54-52-17 was also amended by section 3 of House Bill No. 1186, chapter 627, and by section 5 of Senate Bill No. 2093, chapter 626.

- (2) When the member has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.
- b. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after attaining the age of sixty-five years.
- c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed five years of eligible employment.
- d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. A member is eligible to receive disability retirement benefits only if the member:
- (1) Became disabled during the period of eligible employment and;
  - (2) ~~Is determined eligible for benefits under the Social Security Act as amended; and~~
- ↔ Applies for disability retirement benefits within twelve months of the date the member terminates employment.
4. **Retirement** The board shall calculate retirement benefits must be calculated by the board as follows:
- a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date must be equal an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which must be is determined as follows:
- (1) Service benefit equals one and ~~sixty five~~ sixty-nine hundredths percent of final average salary multiplied by the number of years of service employment.
  - (2) Prior service benefit equals one and ~~sixty five~~ sixty-nine hundredths percent of final average salary multiplied by the number of years of prior service employment.
  - (3) All participants who retired before July 1, ~~1989~~ 1991, are entitled to benefits calculated at one and ~~sixty five~~ sixty-nine hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, ~~1989~~ 1991.
- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date must be equal an annual amount, payable



monthly, comprised of a benefit as defined in this chapter, which must be determined as follows:

- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three percent of final average salary multiplied by the first ten years of judicial service, two percent of final average salary multiplied by the second ten years of judicial service, and one percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
  - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Postponed retirement benefits must be are calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.
  - d. Early retirement benefits must be are calculated as for normal retirement benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
  - e. Disability retirement benefits must be seventy are twenty-five percent of the member's final average salary, ~~reduced by the member's primary benefits under the Social Security Act as amended, and by any workers' compensation benefits paid.~~ The minimum monthly disability retirement benefit under this section is one hundred dollars.
5. Upon termination of employment after completing five years of eligible employment but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued normal retirement benefits.
  6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to any beneficiary designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary under this section, the surviving spouse of the member may select one of the following optional forms of payment:
    - a. A lump sum payment of the member's retirement account as of the date of death.
    - b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.

- c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination.
8. If a member who is receiving retirement benefits or the member's surviving spouse who is receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to such spouse, the member's surviving beneficiary, if any, or the member's estate.
9. The board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:
  - a. Joint and survivor, with fifty percent or one hundred percent options.
  - b. Level social security option, which shall be available only to early retirees.
  - c. Life with five-year or ten-year certain options.

Unless a member requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension.

SECTION 2. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1991.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 632

HOUSE BILL NO. 1392  
(Representatives Martinson, Oban, Rydell)  
(Senators Stenehjelm, Satrom)

### PERS RETIREMENT DATE AND BENEFITS MULTIPLIER

AN ACT to amend and reenact subdivision a of subsection 3 and subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to the normal retirement date and computation of benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 3 of section 54-52-17 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement date is:

- (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
- (2) When the member has a combined total of years of service credit and years of age equal to ~~ninety~~ eighty-eight and has not received a retirement benefit under this chapter.

SECTION 2. AMENDMENT. Subdivision a of subsection 4 of section 54-52-17 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date ~~must be equal~~ an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which ~~must be is~~ determined as follows:

- (1) Service benefit equals one and ~~sixty five hundredths~~ sixty five hundredths ~~eight-tenths~~ percent of final average salary multiplied by the number of years of service employment.
- (2) Prior service benefit equals one and ~~sixty five hundredths~~ sixty five hundredths ~~eight-tenths~~ percent of final average salary multiplied by the number of years of prior service employment.
- (3) All participants who retired before ~~July 1, 1989~~ January 1, 1992, are entitled to benefits calculated at one and ~~sixty five hundredths~~ sixty five hundredths ~~eight-tenths~~ percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning ~~July 1, 1989~~ January 1, 1992.

SECTION 3. EFFECTIVE DATE. This Act is effective for benefit payments on and after January 1, 1992. However, this Act does not become effective unless the board determines before January 1, 1992, with the advice of its actuary, that this Act can be implemented on an actuarially sound basis.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 633

SENATE BILL NO. 2507  
(Satrom)

### RETIREE HEALTH BENEFITS AND CREDIT PURCHASE

AN ACT to amend and reenact section 54-52-17.4 and subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code, relating to purchase of additional credit under the public employees retirement system and to calculation of the allowable monthly credit toward hospital and medical benefits coverage under the retiree health benefits fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.4. Purchase of additional credit.

1. A participating member may elect to purchase credit, within one hundred eighty days of beginning eligible employment or by December 31, ~~1989~~ 1991, whichever is later, for years of service and prior service for which the participating member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service:
  - a. Active employment in the armed forces of the United States for up to four years of credit.
  - b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter.
  - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
  - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
  - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws, from July 1, 1977, to the date the eligible employee became a participating member of the public employees retirement system. However, participating members who were eligible, under section 54-52-19.2, to repurchase prior service credit forfeited by withdrawal from the predecessor plan to the public employees

\* NOTE: Section 54-52-17.4 was also amended by section 5 of House Bill No. 1190, chapter 630.

retirement system are not eligible to purchase that prior service credit under this section.

2. The participating member may purchase credit under this section by paying to the board an amount equal to nine and twelve-hundredths percent, times the participating member's monthly salary on the date of the participating member's election to purchase, times the number of months of credit being purchased, plus interest at a rate determined by rules established by the board.

\* SECTION 2. AMENDMENT. Subsection 2 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to ~~three~~ four dollars multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system or the public employees retirement system. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four.

Approved April 16, 1991

Filed April 18, 1991

- \* NOTE: Section 54-52.1-03.3 was also amended by section 5 of House Bill No. 1186, chapter 627, and by section 2 of House Bill No. 1188, chapter 634.

## CHAPTER 634

HOUSE BILL NO. 1188  
(Committee on State and Federal Government)  
(At the request of Job Service North Dakota)

### UNIFORM GROUP INSURANCE COVERAGE

AN ACT to amend and reenact sections 54-52.1-03.2 and 54-52.1-03.3 of the North Dakota Century Code, relating to the inclusion of members of the retirement program established by job service North Dakota as recipients of retiree health benefits under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-52.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.2. Retiree health benefits fund - Appropriation.

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The board, as trustee of the fund and in exclusive control of its administration, shall:
  - a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended under subsection 6 of section 54-52-04.

\* NOTE: Section 54-52.1-03.2 was also amended by section 6 of Senate Bill No. 2093, chapter 626.

- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.
2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage for eligible retired employees or surviving spouses of eligible retired employees and their dependents under the uniform group insurance program.

\* SECTION 2. AMENDMENT. Section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
  - a. A member of the highway patrolmen's retirement system ~~or the public employees retirement system~~ receiving retirement benefits, ~~or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits,~~ under section 39-03.1-11 ~~or 54-52-17.~~
  - b. ~~The surviving spouse of a~~ A member of the highway patrolmen's retirement system ~~or the public employees retirement system~~ receiving retirement benefits, ~~or the surviving spouse of a member of the public employees retirement system who was eligible to receive, or was receiving, retirement benefits,~~ under section ~~39-03.1-11 or~~ 54-52-17.
  - c. A member of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program.
2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to three dollars multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system ~~or~~ the public employees retirement system, ~~or the retirement program established by job service North Dakota under section 52-11-01.~~ For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly

\* NOTE: Section 54-52.1-03.3 was also amended by section 5 of House Bill No. 1186, chapter 627, and by section 2 of Senate Bill No. 2507, chapter 633.



credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment prior to attaining the age of sixty-four.

3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. However, if the allowable credit exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 635

SENATE BILL NO. 2200  
 (Committee on State and Federal Government)  
 (At the request of the Public Employees Retirement System)

### PRETAX BENEFITS PROGRAM

AN ACT to create and enact two new sections to chapter 54-52.3 of the North Dakota Century Code, relating to confidentiality of information concerning a public employee's participation in the pretax benefits program and deposit of moneys collected under the pretax benefits program; to amend and reenact section 54-52.3-03 of the North Dakota Century Code, relating to the defrayal of expenses associated with the pretax benefits program; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.3-03 of the North Dakota Century Code is amended and reenacted as follows:

54-52.3-03. Employer savings used to defray expenses of administering program - Continuing appropriation. ~~The implementation of a pretax benefits program will result in savings to the state as a result of the diminution of the state's employer contribution to the Federal Insurance Contribution Act tax.~~ The office of management and budget shall transfer funds from the savings accruing to the agencies' salaries and wages line item, as a result of the diminution of the state's employer contribution for the Federal Insurance Contribution Act tax, to a payroll clearing account. The office of management and budget shall transfer funds from the payroll clearing account to the board as necessary to defray the reasonable expenses of administering the pretax benefits program established under this chapter, including expenses associated with the program's medical spending account. Any revenue collected by the board from participating political subdivisions must be used, and is hereby appropriated, to defray the expenses of administering the program under this chapter. The amount necessary to pay the consultants retained by the board, any insurance costs associated with the medical spending account, and medical reimbursements for the medical spending account if funds are insufficient to pay claims are hereby appropriated from the savings and revenue generated by the program. All other expenses of administering the program must be paid in accordance with the agency's appropriation authority as established by the ~~legislature~~ legislative assembly. The director of the office of management and budget may decrease or suspend the transfer of the savings accruing to the agencies' salaries and wages line item to the payroll clearing account upon determination that the funds deposited under this section are sufficient to offset anticipated obligations. Notwithstanding other provisions in this section and section 54-52.3-03, the public employees retirement system board, or any successor state agency, may not establish, enroll, or administer any pretax benefits program for a political subdivision or any other public or private business or entity, except for any program established specifically for employees of the state. The board may continue administering any pretax benefits program

\* NOTE: Section 24-02-37.1 was also amended by section 91 of Senate Bill No. 2050, chapter 231; by section 30 of Senate Bill No. 2058, chapter 95; and by section 4 of Senate Bill No. 2073, chapter 600.

\*\*\* NOTE: Subsection 1 of section 28-32-01 was also amended by section 33 of Senate Bill No. 2058, chapter 95, and by section 9 of Senate Bill No. 2245, chapter 592.

\*\* NOTE: Section 24-03-21 was also amended by section 31 of Senate Bill No. 2058, chapter 95.

\*\*\*\* NOTE: Section 37-03-14 was also amended by section 1 of House Bill No. 1088, chapter 378.

established for a political subdivision before January 1, 1991, through the end of the plan year.

SECTION 2. A new section to chapter 54-52.3 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of program records. Any records and information pertaining to a public employee's medical and dependent care reimbursement under the pretax benefits program are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The records and information may be disclosed, under rules adopted by the board, only to:

1. A person to whom the employee has given written consent to have the information disclosed.
2. A person legally representing the employee, upon proper proof of representation.
3. A person authorized by a court order.

SECTION 3. A new section to chapter 54-52.3 of the North Dakota Century Code is created and enacted as follows:

Deposit of program moneys - Appropriation. All moneys collected pursuant to elections made by public employees under the pretax benefits program for the medical spending account and the dependent care account must be deposited in an account with the Bank of North Dakota. All moneys deposited in the account, not otherwise appropriated, are hereby appropriated for the purpose of making payments to employees participating in the program. The board shall transfer any surplus in the pretax benefits account at the end of the plan year to the payroll clearing account.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 636

SENATE BILL NO. 2512  
(Senators Yockim, Mushik, Kelly)  
(Representatives Stofferahn, B. Anderson)

**CHILDREN'S SERVICES COMMITTEE MEMBERS**

AN ACT to amend and reenact section 54-56-01 of the North Dakota Century Code, relating to the children's services coordinating committee membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 54-56-01 of the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of institutions the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget, or a designee of the director of the office of management and budget, the director of vocational education, the chairperson of the governor's committee on children and youth, ~~the executive director~~ a representative of the Indian affairs commission, and a designee of the chief justice, and a member at large to be appointed by the governor. The governor or the governor's designee shall act as chairperson.

Approved April 5, 1991  
Filed April 8, 1991

\* NOTE: Section 54-56-01 was also amended by section 44 of Senate Bill No. 2245, chapter 592.

## CHAPTER 637

SENATE BILL NO. 2234  
(Maxson, Stenehjem)

### OFFICE OF ADMINISTRATIVE HEARINGS

AN ACT to provide for the creation of an office of administrative hearings, the appointment of a director of administrative hearings and other administrative hearings officers, to require the adoption of uniform rules of administrative practice and procedure, and to establish an advisory council; to repeal subsection 2 of section 50-24.4-18 and subsection 18 of section 54-12-01 of the North Dakota Century Code, relating to appointment of administrative hearings officers by the attorney general and certain appeals by nursing homes; to provide an appropriation; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Office of administrative hearings - Agency defined - Administrative agency defined.

1. A state office of administrative hearings is created.
2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney-at-law in good standing, admitted to the bar in this state, and currently licensed by the state bar board. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside at administrative hearings and may employ or appoint additional administrative hearings officers to serve in the office as necessary to fulfill the duties of office as described in section 4 of this Act and to provide administrative hearings officers to preside at administrative hearings as requested by agencies. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative hearings officers must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative hearings officer must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the officer's ability to function officially in a fair and objective manner.

4. The director of administrative hearings may employ the necessary support staff required by the office. Support staff must be classified employees.
5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of hearings officers and support staff in consultation with and approved by the director of the central personnel division, including the salary to be paid for each position or category of position.
6. In this Act, unless the context or subject matter otherwise requires, "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government whether headed by an appointed or elected official.
7. In this Act, unless the context or subject matter otherwise requires, "administrative agency" means that term as defined in section 28-32-01.

SECTION 2. Temporary administrative hearings officers. When regularly appointed administrative hearings officers are not available, the director of administrative hearings may contract on a temporary basis with qualified individuals to serve as administrative hearings officers for the office of administrative hearings.

SECTION 3. Hearings before administrative hearings officers.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all hearings of administrative agencies under chapter 28-32, except hearings conducted by the public service commission, the industrial commission, the commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the commissioner of labor, and except rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapters 12-56.1 and 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; education of the handicapped act due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.
2. The agency head shall make a written request to the director requesting the designation of a hearings officer for each administrative hearing to be held. An agency may request a hearings officer to be designated to preside over the entire administrative proceeding. If a statute so requires, an agency

shall, or unless a statute prohibits, an agency may, request that the hearings officer designated issue the final order in the matter. Informal disposition of an administrative proceeding may be made by an agency at any time before or after the designation of a hearings officer from the office of administrative hearings.

3. If a party to an administrative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default. If issued, the default notice and order must be served upon all the parties and the hearings officer, if one has been assigned. After service of the default notice and order, the agency may conduct further proceedings necessary to complete the administrative action with or without the participation of the party in default, and with or without a hearings officer from the office of administrative hearings presiding. The agency shall determine all the issues involved.
4. When assigning administrative hearings officers to conduct administrative hearings or to preside in an administrative proceeding, the director shall attempt to assign a hearings officer having expertise in the subject matter to be dealt with.
5. The director of administrative hearings may assign an administrative hearings officer to preside in an administrative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, or to any agency to conduct a rulemaking hearing.

SECTION 4. Duties of administrative hearings officers. It is the duty of all administrative hearings officers to:

1. Advise an agency that has requested a hearings officer, and other affected interests and parties, about the location and time for an administrative hearing, or related proceeding, to be held, in order to allow for participation by all affected interests and parties. The hearings officer shall give proper notice as required by law.
2. Conduct only hearings and related proceedings for which proper notice has been given.
3. Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
4. When appropriate, make findings of fact, conclusions of law, and recommendations, taking notice whether the agency has documented its statutory authority to take the proposed action, fulfilled all relevant substantive and procedural requirements of law or rule, and, in rulemaking proceedings, conformed to the provisions of chapter 28-32.
5. Perform any and all other functions required by law, assigned by the director of administrative hearings, or delegated to the hearings officers by the agency.

6. When an agency requests a hearings officer to preside only as a procedural hearings officer, the hearings officer may only conduct the hearing and perform such other functions of the proceeding as requested. If the hearings officer is presiding only as a procedural hearings officer, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing. The procedural hearings officer may issue orders in regard to the conduct of the hearing, pursuant to statute or rule, and to otherwise effect an orderly and prompt disposition of the proceedings.

**SECTION 5. Uniform rules of administrative practice or procedure - Effective date - Hearings officer rules.**

1. The director of administrative hearings shall adopt, in accordance with chapter 28-32, rules of administrative hearings practice or procedure which implement chapter 28-32 and which aid in the course and conduct of all administrative hearings and related proceedings conducted by administrative agencies under chapter 28-32. The uniform rules must be effective January 1, 1992. The uniform rules must be used by all administrative agencies subject to chapter 28-32 which do not have their own rules of administrative hearings practice or procedure governing the course and conduct of hearings. If an administrative agency's rules are silent on any aspect of the agency's administrative hearings practice or procedure, the applicable uniform rule governs.
2. The director of administrative hearings may adopt rules to further establish qualifications for hearings officers; to establish procedures for requesting and designating hearings officers; and to facilitate the performance of duties and responsibilities conferred by sections 1 through 8 of this Act. Any rules adopted by the director of administrative hearings pursuant to this subsection must be adopted in accordance with chapter 28-32.

**SECTION 6. Transfer and transition provisions.**

1. There is transferred from all agencies required to use the office of administrative hearings to conduct administrative hearings, to the office of administrative hearings, on the effective date of this Act, the following:
  - a. All functions performed on the day before the effective date of this Act by hearings officers of the agency, pursuant to the administrative hearings provisions of chapter 28-32, and any rules adopted pursuant to it, or any other applicable law, which must now be performed by hearings officers of the office of administrative hearings on and after the effective date of this Act.
  - b. The full-time equivalents of any agency hearings officer positions which are dedicated to the appointment or employment full time, or half time or more, of administrative hearings officers. Any individual appointed or employed pursuant to such full-time equivalent whose position is transferred to the office of administrative hearings may elect to accept the



transfer, with no reduction in pay, or may elect to remain employed by the agency in another position, if offered by the agency.

- c. The full-time equivalents of any agency positions that are dedicated to the appointment or employment full time, or half time or more, of support staff for administrative hearings officers or their work. Any individual who is appointed or employed pursuant to such full-time equivalent whose position is transferred to the office of administrative hearings may elect to accept the transfer, with no reduction in pay or classification, or may elect to remain employed by the agency in another position, if offered by the agency.
  - d. All property, equipment, materials, and copies of records held, used, arising from, available, or to be made available, in connection with the functions, individuals, and authority transferred by this section, as needed and required by the office of administrative hearings.
2. If the director of administrative hearings and the agency transferring any position or any property, equipment, materials, or copies of records to the office of administrative hearings cannot agree about who or what is to be transferred, the director of the office of management and budget may make determinations with regard to transfers to carry out sections 1 through 8 of this Act, to accommodate the needs and requirements of the office of administrative hearings, and to accommodate a smooth transition of positions, persons, property, equipment, materials, and records.
  3. The director of the office of management and budget, if necessary, may require agencies to allow the use of agency facilities on a temporary basis to allow for an orderly consolidation of the office of administrative hearings, personnel, property, equipment, materials, and copies of records in one location as space becomes available.
  4. Administrative proceedings in progress at the time of the effective date of this Act may be transferred to the office of administrative hearings to be conducted in accordance with applicable law only if the same person or persons currently involved in conducting the proceedings for the agency is available to conduct the proceedings for the office of administrative hearings. Otherwise, an administrative proceeding in progress at the time of the effective date of this Act must be handled by the agency or person previously involved, in accordance with applicable law.

**SECTION 7. Compensation for provision of hearings officers - Special fund established - Continuing appropriation.**

1. The office of administrative hearings may require payment for services rendered by any administrative hearings officer provided by it to any agency, or any unit of local government, in the conduct of an administrative hearing and related proceedings and those entities must make the required payment to the office. Payment may include payment for support staff necessary to render hearings officer services. General fund moneys may not be used for

payment by state agencies pursuant to this subsection. Moneys received by the office of administrative hearings in payment for providing an administrative hearings officer to conduct an administrative hearing and related proceedings must be deposited into the operating fund of the office of administrative hearings.

2. The office of administrative hearings may require payment for mileage, meals, and lodging in connection with services rendered by an administrative hearings officer provided to any agency, or any unit of local government, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.
3. A special fund is established in the state treasury and designated as the administrative hearings fund. The director of administrative hearings shall deposit in the fund all moneys received by the office of administrative hearings in payment for providing temporary administrative hearings officers to conduct administrative hearings and related proceedings under this Act, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any administrative hearings officer to conduct an administrative hearing and related proceedings. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:
  - a. For the director of administrative hearings to contract with and make payment to temporary administrative hearings officers, as necessary, for the purpose of providing requested administrative hearings officers to agencies or any unit of local government.
  - b. For the director of administrative hearings to pay mileage, meals, and lodging to any hearings officers, as necessary, in connection with the services to be provided by this Act.

**SECTION 8. ADVISORY COUNCIL.** There is created a state advisory council for administrative hearings. The advisory council must be a committee or subcommittee of the state bar association of North Dakota, appointed by its president. The advisory council shall meet with the director at least semiannually and shall advise the director on policy matters affecting the office of administrative hearings and on rules adopted by the director.

**SECTION 9. REPEAL.** Subsection 2 of section 50-24.4-18 and subsection 18 of section 54-12-01 of the North Dakota Century Code are repealed.

**SECTION 10. APPROPRIATION.** The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds

derived from federal funds and other income to the office of administrative hearings for the purpose of providing administrative hearings officers for state agencies, and such units of local government, as may require hearings officer services, for the biennium beginning July 1, 1991, and ending June 30, 1993, as follows:

Salaries and wages	\$484,477
Information Services Division	19,000
Operating expenses	67,816
Equipment	<u>33,232</u>
Total estimated income	\$604,525

SECTION 11. TRANSFER - ATTORNEY GENERAL - OFFICE OF MANAGEMENT AND BUDGET. There are hereby transferred the amounts of \$161,443 and \$78,076, now contained in the budgets of the attorney general and the office of management and budget, respectively, or so much thereof as may be necessary, to the office of administrative hearings for the purpose of providing the services authorized in this Act for the biennium beginning July 1, 1991, and ending June 30, 1993, subject to emergency commission approval. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1991, and ending June 30, 1993, to approve these transfers of funds which are appropriated in section 10 of this Act to the extent necessary and based upon application by the office of administrative hearings.

Approved April 16, 1991  
Filed April 18, 1991

# STATE HISTORICAL SOCIETY AND STATE PARKS

## CHAPTER 638

HOUSE BILL NO. 1307  
(Representatives Pyle, Myrdal)  
(Senator Marks)

### HISTORICAL BOARD VOTING BY REPRESENTATION

AN ACT to amend and reenact section 55-01-01 of the North Dakota Century Code, relating to the state historical board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. There shall be a state historical society of North Dakota which will be under the supervision and control of the state historical board. The board shall consist of nine members who shall be appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments shall be for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified except that the first appointments under this section shall be staggered so that the term of three members shall expire each year. Vacancies occurring other than by the expiration of an appointive term shall be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, state engineer, director of the department of transportation, state forester, state game and fish commissioner, director of the state library, and state treasurer shall be ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.

Approved March 13, 1991  
Filed March 13, 1991

\* NOTE: Section 55-01-01 was also amended by section 93 of Senate Bill No. 2050, chapter 231.

## CHAPTER 639

SENATE BILL NO. 2170  
(Committee on Appropriations)  
(At the request of the State Historical Society)

### HISTORICAL SOCIETY FACILITY FEES

AN ACT to amend and reenact section 55-02-04 of the North Dakota Century Code, relating to establishment and disposition of fees for use of facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-02-04 of the North Dakota Century Code is amended and reenacted as follows:

55-02-04. Fees for use of facilities - Concession agreements - Duration - Appropriation. The superintendent of the state historical board when so authorized by the state historical board shall:

1. Fix and collect such fees as it may deem reasonable for the use of the facilities of any property administered by the board; and
2. Enter into concession agreements or leases with private persons, firms, or corporations for the operation of any services, including without limitation motels, cabins, or other lodging places, within the areas of any property administered by the board but no such concession agreement or lease shall run for more than twenty years.
3. Establish fees for admissions, use charges, and services provided by the board.

All moneys collected as fees, compensation for concession agreements, or otherwise, shall be placed in the general fund for the purpose of reimbursing such fund for appropriations made to the state historical board; except that revenues collected for services, shipping or postage charges, fees, admissions, use charges, rentals, compensation for concession agreements, or funds received in the normal course of business from concession operations actually carried on by the state as a proprietor shall be deposited in the state treasury in a special revolving fund; and all. All moneys in such fund are hereby appropriated on a continuing basis for expenditure in the course of carrying on the business activities of such concession operations or providing the services from which the income is derived. If at the end of any fiscal year the balance in the special fund shall exceed fifty thousand dollars, the state treasurer upon order of the director of the office of management and budget shall transfer such portion of the balance of the special fund as exceeds fifty thousand dollars to the general fund.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 640

SENATE BILL NO. 2054  
(Legislative Council)  
(Interim Jobs Development Commission)

### PARKS AND TOURISM DEPARTMENT

AN ACT to provide for the establishment of the North Dakota parks and tourism department; to amend and reenact subdivision g of subsection 1 of section 6-09-15, subsection 3 of section 10-06-04.3, sections 24-02-37.1, 24-03-21, subdivision o of subsection 1 of section 28-32-01, section 37-03-14, paragraph 7 of subdivision a of subsection 2 of section 39-01-01, section 39-24-05, subsection 3 of section 39-24-08, sections 39-24-09.1, 39-29-01.1, subsection 2 of section 39-29-05, subsection 3 of section 39-29-08, section 39-29-10, subsection 2 of section 54-34-06, sections 55-08-02.1, 55-08-03.1, 55-08-07, 55-08-07.1, 55-08-07.2, 55-08-08, 55-08-09, 55-08-10, 55-08-11, 55-08-12, 55-08-13, 55-08-14.1, 55-08-15, 55-10-04, subsection 3 of section 55-11-02, section 55-11-09, subsection 6 of section 57-39.2-28, section 61-29-04, and subsection 1 of section 61-33-09 of the North Dakota Century Code, relating to the powers and duties of the North Dakota parks and tourism department; to repeal sections 55-08-01, 55-08-03, 55-11-04, and 55-11-10 of the North Dakota Century Code, relating to the duties of the director of the parks and recreation department and advisers to the parks and recreation department; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 6-09-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501 (c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the ~~state~~ parks and ~~recreation~~ tourism department.

\*\* SECTION 2. AMENDMENT. Subsection 3 of section 10-06-04.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Before any farmland or ranchland can be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and outdoor recreation ~~department~~ sites division, the state

\* NOTE: Section 6-09-15 was also amended by section 5 of Senate Bill No. 2058, chapter 95.

\*\* NOTE: Subsection 3 of section 10-06-04.3 was also amended by section 2 of Senate Bill No. 2050, chapter 231.

engineer, the ~~agriculture~~ commissioner of agriculture, the state forester, the game and fish commissioner, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

\* SECTION 3. AMENDMENT. Section 24-02-37.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-37.1. Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of ~~state~~ the parks and outdoor recreation sites division, the director of the economic development commission, and the commissioner. The committee shall meet at the call of the commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

\*\* SECTION 4. AMENDMENT. Section 24-03-21 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-03-21. Preparation of road maps - Publication of tourist information. The commissioner shall prepare for general distribution, road maps of the state highway system and such other roads as ~~he shall deem the commissioner determines~~ necessary. Any tourist-oriented material printed on road maps ~~shall~~ must be prepared by the ~~economic development commission~~ tourism division of the parks and tourism department at no ~~expense~~ cost to the department of transportation.

\*\*\* SECTION 5. AMENDMENT. Subdivision o of subsection 1 of section 28-32-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

o. The parks and ~~recreation~~ tourism department.

\*\*\*\* SECTION 6. AMENDMENT. Section 37-03-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-03-14. North Dakota veterans' cemetery - Administration. The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort

Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the ~~state~~ parks and outdoor recreation department sites division for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

SECTION 7. AMENDMENT. Paragraph 7 of subdivision a of subsection 2 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- (7) Vehicles operated by or under the control of the director, ~~assistant director, and park superintendents~~ of the North Dakota parks and outdoor recreation department sites division.

SECTION 8. AMENDMENT. Section 39-24-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-24-05. Disposition of registration fees. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. The ~~state~~ parks and ~~recreation tourism~~ department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities.

SECTION 9. AMENDMENT. Subsection 3 of section 39-24-08 of the North Dakota Century Code is amended and reenacted as follows:

3. The director of the ~~state~~ parks and outdoor recreation department sites division shall ~~promulgate~~ adopt rules and regulations for regulating use of snowmobiles in state parks and other state-owned land ~~described in section 55-08-03~~ under the supervision of the director.

SECTION 10. AMENDMENT. Section 39-24-09.1 of the North Dakota Century Code is amended and reenacted as follows:

39-24-09.1. Operation by persons under age sixteen. Except as otherwise provided in this section, it is unlawful for any person twelve years of age and over who has not reached sixteen years of age and who is not in possession of a valid driver's license or permit to operate a snowmobile, except upon the lands of the person's parent or guardian, unless and until the person has completed a snowmobile safety training course as prescribed by the director of the ~~state~~ parks and outdoor recreation department sites division pursuant to chapter 28-32 and has received the appropriate snowmobile safety certificate issued by the commissioner. The failure of an operator to exhibit a snowmobile safety certificate upon demand to any official authorized to enforce ~~the provisions of~~ this chapter is presumptive evidence that ~~such~~ the person is not the holder of ~~such~~ the certificate.



Fees collected from each person receiving certification must be deposited into the snowmobile trail tax fund for purposes of establishing snowmobile safety programs.

SECTION 11. AMENDMENT. Section 39-29-01.1 of the North Dakota Century Code is amended and reenacted as follows:

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of an all-terrain vehicle, each dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter the dealer shall file a report with the parks and ~~recreation~~ tourism department ~~that which~~ discloses the number of all-terrain vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the all-terrain vehicle fund established under subsection 2 of section 39-29-05. The fees may be used only by the parks and ~~recreation~~ tourism department and only for all-terrain vehicle safety education and promotion.

SECTION 12. AMENDMENT. Subsection 2 of section 39-29-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The all-terrain vehicle trail tax must be deposited in a state fund in the state treasury. The ~~state~~ parks and ~~recreation~~ tourism department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing all-terrain vehicle facilities, all-terrain vehicle use areas, and all-terrain vehicle safety and education programs.

SECTION 13. AMENDMENT. Subsection 3 of section 39-29-08 of the North Dakota Century Code is amended and reenacted as follows:

3. The director of ~~state~~ the parks and ~~outdoor~~ recreation sites division shall adopt rules to regulate use of all-terrain vehicles in state parks and other state-owned land ~~described in section 55-08-03~~ under the supervision of the director.

SECTION 14. AMENDMENT. Section 39-29-10 of the North Dakota Century Code is amended and reenacted as follows:

39-29-10. Operation by persons under age sixteen. Except as otherwise provided in this section, a person under sixteen years of age who is not in possession of a valid operator's license or permit to operate an all-terrain vehicle may not, except upon the lands of the person's parent or guardian, operate an all-terrain vehicle. A person at least twelve years of age may operate an all-terrain vehicle if the person has completed an all-terrain vehicle safety training course prescribed by the director of the ~~state~~ parks and ~~outdoor~~ recreation ~~department~~ sites division and has received the appropriate all-terrain vehicle safety certificate issued by the commissioner. The failure of an operator to exhibit an all-terrain vehicle safety certificate on demand to any official authorized to enforce this chapter is presumptive evidence that that person does not hold such a certificate. Fees collected from each person receiving certification must be deposited in the all-terrain vehicle trail tax fund for all-terrain vehicle safety education and training programs.

\* SECTION 15. AMENDMENT. Subsection 2 of section 54-34-06 of the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Section 54-34-06 was repealed by section 48 of Senate Bill No. 2058, chapter 95.

2. Plan, execute, and direct a program of publicity, research, and agricultural and industrial promotion, the primary mission and focus of which is the establishment and expansion of primary sector business and industry, which will:
  - a. Attract investors, investment capital, and new residents.
  - b. Foster and promote ~~tourism and~~ international trade.
  - c. Assist in improving the business and agricultural climate of North Dakota to encourage the growth and development of business and industry.

SECTION 16. State parks and tourism policy. The parks and tourism department shall plan and coordinate government programs encouraging the full development and preservation of existing and future parks, outdoor recreation areas, nature preserves, and the promotion of tourism.

SECTION 17. Parks and tourism department - Directors. There is created a parks and tourism department to serve as the focal point in the state for activities related to parks and tourism. The department shall plan and coordinate programs for all governmental levels to fulfill the state parks and tourism policy. The department consists of two divisions: a parks and outdoor recreation sites division and a tourism division. The governor shall appoint a director of each division who shall serve at the will of the governor.

SECTION 18. Director of parks and outdoor recreation sites division - Powers - Penalty. The director of the parks and outdoor recreation sites division shall:

1. Manage all state parks, state campgrounds, state recreational areas or reserves and any other property under the control of the parks and tourism department, including site selection and planning, establishment of fees and charges, establishment of hours and seasons of operation, and regulation of the conduct of guests and visitors.
2. Appoint personnel necessary to carry out the duties and functions of the division, and fix their compensation within the limits of legislative appropriations.
3. Accept on behalf of the state, gifts or grants of property for the department.
4. Acquire by purchase, gift, or condemnation any real property or interest in real property in this state or an adjoining state if necessary for park purposes. However, condemnation proceedings may be instituted only upon approval by the emergency commission.
5. Lease, sell, or exchange real property under the department's control if necessary for the improved management of state parks, state campgrounds, and state recreational areas or reserves.
6. Administer all real property and interests in real property and personal property held for recreational purposes as an agent for

any state or federal agency or a political subdivision of the state.

7. Adopt rules relating to the protection, care, and use of state parks, state campgrounds, state recreational areas or reserves, and any other real or personal property administered by the director.
8. Sell, mortgage, transfer, or dispose of property under the control of the department as authorized by law.
9. Seek the advice of the superintendent of the state historical board on all matters relating to history, prehistory, and paleontology of the state parks. If additional assistance is needed or required, the superintendent shall coordinate the assistance.
10. Advise in advance and consult with the superintendent of the state historical board before undertaking any earthmoving operations or major constructions so that the director may be advised whether the earthmoving operations or constructions might endanger historical archaeological artifacts or the paleontological value of the area. The superintendent of the state historical board and the director shall jointly agree on the disposition of historical artifacts and archaeological material at state monuments and state parks.
11. In the director's discretion, designate any state park or state campground or an area within any state park or state campground as an area within which the use of alcoholic beverages is prohibited. Any person violating that designation is guilty of an infraction.

\* SECTION 19. AMENDMENT. Section 55-08-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-02.1. Outdoor recreation interagency council - Composition - Functions. A state outdoor recreation interagency council ~~shall exist and shall~~ is created and must be composed of the state engineer of the water commission, commissioner of the state game and fish department, superintendent of the state historical board, ~~commissioner of the state highway~~ director of the department of transportation, executive secretary of the state soil conservation committee, ~~state parks and recreation director~~ the director of the parks and outdoor recreation sites division, chairman of the state water commission, state health officer, director of the economic development commission, state forester, and the commissioner of university and school lands. The governor or ~~his~~ the governor's designee ~~shall be~~ is council chairman.

The members of the council:

1. Shall deal with the distribution of state general fund appropriations ~~which that~~ are to be matched with federal outdoor recreation grants-in-aid at the state level. Each member ~~shall~~ have ~~has~~ one vote in such matters.
2. Shall meet periodically at the call of the chairman and shall keep minutes and other financial records dealing with ~~such~~ the meetings.
3. Shall cooperate with the United States or any appropriate agency thereof, particularly in connection with the distribution and use

\* NOTE: Section 55-08-02.1 was also amended by section 94 of Senate Bill No. 2050, chapter 231, and by section 46 of Senate Bill No. 2058, chapter 95.

of federal aid funds ~~which~~ that the state may become eligible to receive.

4. Shall encourage cooperation among public, voluntary, and commercial agencies and organizations.
5. Subject to the approval of the governor, may adopt rules for the conduct of its affairs as may be deemed necessary, including the time, place, and notice of regular meetings, call and notice of special meetings, and number of members required for a quorum to transact business.

SECTION 20. AMENDMENT. Section 55-08-03.1 of the North Dakota Century Code is amended and reenacted as follows:

55-08-03.1. Recreation ~~division grants programs~~ - Function. The director, ~~without limiting the generality thereof, shall be vested with the power, authority, duty, and general jurisdiction to may:~~

1. Apply for and receive federal grants-in-aid for recreation purposes. ~~He shall~~ The director of the parks and outdoor recreation sites division may approve their allocation to political subdivisions of the state only after ~~he the director~~ has determined that sufficient funds, including those funds necessary for adequate maintenance, are and will be available from the political subdivisions for meeting the state's share of project costs. If for any reason it ~~shall become~~ is necessary for any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision which it has agreed to perform in the construction or maintenance of such projects, the state ~~shall have~~ has a claim against the subdivision for ~~such the~~ money expended. ~~All funds allocated to the state for recreation purposes shall must~~ be distributed to the departments, agencies, or political subdivisions entitled ~~thereto~~ to the funds.
2. Keep financial and other records relating ~~thereto to the programs,~~ and furnish to appropriate officials and agencies of the United States and the state ~~of North Dakota~~ such reports and information as may be reasonably necessary to enable ~~such those~~ officials and agencies to perform their duties under ~~such the~~ programs.
3. Undertake the development of broad recreation policies for the state as a whole and a long range plan for their implementation.
4. Initiate a continuing appraisal of the total state recreation resources, potentials, and needs and the adequacy of current efforts to meet the demands.
5. Provide for the coordination and appraisal of related programs administered by all levels of government and by private enterprise.

\* SECTION 21. AMENDMENT. Section 55-08-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07. State park and tourism fund - Appropriation. All revenues collected as permit fees, admissions, use charges, rentals, compensation for concession agreements, or otherwise, with the exception of revenue from

\* NOTE: Section 55-08-07 was also amended by section 2 of Senate Bill No. 2232, chapter 644.

bequests, trusts, or gifts, must be placed in the state park and tourism fund, together with all proceeds of bonds issued pursuant to section 55-08-08. This fund must be maintained by the state treasurer as a special trust fund and is ~~hereby~~ irrevocably appropriated and must be used and disbursed solely for the following purposes:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service must be credited to a special operating account, from which must be paid only the current, reasonable and necessary cost of operating ~~such that~~ service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable to the furnishing of ~~such that~~ service. The director ~~shall may~~ incur no operating cost for any building, structure, or facility leased, and ~~such the~~ leases must provide for the payment of ~~such the~~ costs by the lessee and for the payment of a net rental in addition ~~thereto the costs~~. No ~~such~~ lease rentals and no motor vehicle permit fees may be credited to operating accounts.
2. To provide for the payment and security of the principal and interest when due on any state park and tourism revenue bonds issued ~~pursuant to~~ under section 55-08-08. For this purpose the treasurer shall credit to a special service account within the state park and tourism fund, as received, all bond proceeds, all motor vehicle permit fees and all rental payments by lessees, and all net income remaining in the operating account for each special service at the end of each month, in excess of the costs of operation thereof which are then payable or are to become due and payable within one month, and shall transfer from this fund and account to the revenue bond fund described in section 55-08-09, whenever necessary, so much of the revenues then on hand as may be required, ~~or all thereof, if necessary,~~ to produce a balance in the revenue bond fund equal to the sum of the interest due and to become due within eighteen months plus the principal due and to become due within twenty-four months thereafter on all outstanding series of ~~such the~~ bonds.
3. To finance the acquisition, construction, reconstruction, improvement, betterment, or extension of ~~park the department's~~ properties, for projects within state parks, state campgrounds, state recreation areas, and reserves including, ~~but without limitation,~~ the acquisition of land and water, the erection of buildings and structures, and the improvement of properties held in trust for or leased by the state of North Dakota, ~~when and,~~ as authorized ~~from time to time~~ by the legislative assembly of the state of North Dakota. For this purpose the director shall authorize the disbursement ~~from time to time~~ of bond proceeds and revenues received in the fund, ~~provided, that no such disbursements.~~ However, a disbursement may not be made in excess of the amounts of revenue bonds issued and other funds granted or appropriated and received for this purpose, and no ~~such~~ disbursements may be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

- 4. For any other park purpose for which funds have been appropriated by the legislative assembly to the North Dakota parks and recreation tourism department; ~~provided, that no such.~~ A disbursement may not be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

SECTION 22. AMENDMENT. Section 55-08-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.1. State parks ~~and recreation and tourism~~ department concession revolving fund. The director shall maintain a state parks and tourism concession revolving fund to be used for the following:

- 1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands ~~at the state parks~~, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
- 2. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.

The sum of fifty thousand dollars is hereby established in the state parks and tourism concession revolving fund for the purpose provided in this section as a limit on the fund balance after accrued liabilities on June thirtieth of each year. Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year must be transferred to the state park and tourism operating fund.

\* SECTION 23. AMENDMENT. Section 55-08-07.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.2. State parks ~~and recreation department~~ tourism gift fund - Fund use. There is established in the state treasury a special fund designated as the state parks and tourism gift fund. All donations to the state parks and recreation tourism department in the form of gifts, trusts, and bequests of property or money, that would cause the department to exceed its appropriated spending authority and any interest accruing thereon, must be placed in the state parks and tourism gift fund and is hereby appropriated to the department. The fund may be used and disbursed by the state parks and recreation tourism department, with the approval of the state emergency commission, in accordance with the terms of the donation as determined by the director.

SECTION 24. AMENDMENT. Section 55-08-08 of the North Dakota Century Code is amended and reenacted as follows:

55-08-08. State park and tourism revenue bonds. For the purpose of paying all or part of the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of park properties for state parks, state campgrounds, state recreation areas, and reserves, as described in subsection 2 of section 55-08-07, which may ~~from time to time~~, be authorized by the legislative assembly, the money may be borrowed on the credit of the revenues to be received in the state park and tourism fund. ~~Such~~ The borrowing ~~shall~~ must be authorized by a board consisting of the governor, the state treasurer, and the director of ~~state~~ the parks and outdoor recreation sites division, by resolution or resolutions duly adopted by the vote of a

\* NOTE: Section 55-08-07.2 was also amended by section 1 of Senate Bill No. 2119, chapter 646.

majority of all members of ~~such~~ the board. In anticipation of the collections of ~~such~~ the revenues, negotiable bonds may be issued in ~~such~~ an amount as, in the opinion of the board, may be necessary for ~~such~~ that purpose, within the limits of the authority granted by the legislative assembly in each instance, and the board may provide for the payment of ~~such~~ the bonds and the rights of the holders ~~thereof~~ of the bonds as provided in this chapter. The bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their date, may be in such denomination or denominations, may be in such form, either coupon or fully registered or registered as to ownership or principal, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment at such place or places, may be subject to such terms of redemption with or without premium, and may bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the board, subject to ~~the further provisions of~~ this section. The bonds may be sold in such manner and at such price or prices, not less than ninety-eight percent of par plus accrued interest to date of delivery, as may be considered by the board to be advisable. The bonds ~~shall~~ must have all of the qualities and incidents of negotiable paper, and ~~such~~ the bonds and the income ~~therefrom shall be from the bonds are~~ exempt from any taxes, except inheritance, estate, and transfer taxes. The board may in its discretion authorize one series of bonds hereunder for more than one project, at more than one state park, state campground, state recreation area, or reserve. It may also issue series of bonds hereunder for the refunding of outstanding bonds issued hereunder when such action is desirable in its judgment and is consistent with the terms of the resolution or resolutions authorizing the outstanding bonds.

SECTION 25. AMENDMENT. Section 55-08-09 of the North Dakota Century Code is amended and reenacted as follows:

55-08-09. Revenue bond fund. ~~From and after~~ After the issuance of any bonds under ~~the provisions of~~ section 55-08-08, the state treasurer shall transfer revenues at the times and in the amounts directed in section 55-08-07 to a special trust fund to be known as the state park and tourism revenue bond fund, which ~~shall~~ must be maintained in the state treasury until all bonds issued under section 55-08-08 and all interest ~~thereon are on the bonds is~~ fully paid and discharged. This fund ~~shall~~ must be disbursed by the state treasurer solely for the purpose of paying principal and interest when due on ~~said~~ the bonds, and the treasurer shall also maintain ~~therein in the fund,~~ by the transfer of revenues from the state ~~parks park and tourism~~ fund whenever necessary and available, a reserve at all times equal to the total amount of principal and interest to become due on all ~~such~~ the bonds within the then next ~~succeeding~~ period of twelve months. As principal and interest become due from time to time, the director of the office of management and budget, not less than fifteen days ~~prior to before~~ the payment dates, shall issue warrants upon the state treasurer against ~~said~~ the revenue bond fund for the amount of ~~such~~ the payment coming due, and the state treasurer shall make payments from ~~such~~ the fund of the amounts due.

SECTION 26. AMENDMENT. Section 55-08-10 of the North Dakota Century Code is amended and reenacted as follows:

55-08-10. Covenants of board. The board ~~is authorized and directed to~~ shall pledge irrevocably the revenues appropriated by section 55-08-07 to the state park and tourism fund for the payment of principal and interest due on all bonds issued pursuant to section 55-08-08 and for the accumulation and

maintenance of the reserve in the state park and tourism revenue bond fund as provided in section 55-08-09. ~~In order to~~ To secure the prompt payment of ~~such~~ the principal and interest and the proper application of the revenues pledged thereto, the board ~~is authorized~~ may by appropriate provisions in the resolution or resolutions authorizing the bonds to covenant as to the use and disposition of the proceeds of the sale of ~~such~~ the bonds; the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds; the issuance of any other obligation payable from ~~said~~ the revenues; and any other matters other than and in addition to those ~~herein~~ expressly mentioned ~~in this section~~, as to which covenants may be considered necessary or advisable to effect the purposes of this chapter. All such agreements and covenants entered into by the board ~~shall be~~ are enforceable by appropriate action or suit at law or in equity, which may be brought by any holder or holders of bonds issued hereunder.

SECTION 27. AMENDMENT. Section 55-08-11 of the North Dakota Century Code is amended and reenacted as follows:

55-08-11. Limitation on use of bond proceeds. No buildings or additions ~~shall~~ may be erected, and no bonds ~~shall~~ may be issued or the proceeds used for the payment of the cost of any projects under the provisions of section 55-08-08, ~~save and except for~~ such specified projects ~~as may be from time to time designated and authorized by legislative act, or the board if permitted by the legislative assembly shall so provide, nor shall any.~~ No such project may be erected at a cost exceeding the amount fixed by the legislative assembly in such act or by the board if ~~provided by the legislative assembly shall so provide,~~ as the maximum to be expended ~~therefor for the project.~~ The proceeds of all bonds credited to the state parks park and tourism fund ~~shall~~ must be used solely for the purpose or purposes for which the bonds are authorized. The board ~~is empowered to~~ may make and execute all instruments which may be deemed necessary or advisable to provide for the completion of any project or for the sale of the bonds or for interim financing deemed necessary or advisable pending the sale of the bonds, and pledging the proceeds of the bonds. The director of the office of management and budget ~~is authorized and directed to~~ shall issue warrants upon the state treasury against ~~said~~ the fund for such amounts as ~~he may from time to time find to be~~ is due upon audited itemized estimates and claims ~~which that bear the approval of the officials designated by the board for such that purpose.~~ The state park and tourism fund and revenue bond fund may be deposited by the state treasurer with the Bank of North Dakota or in a bank ~~which that~~ is a duly designated depository for state funds, or may be invested under direction of the board in securities ~~which that~~ are direct obligations of the United States of America, except to the extent that ~~such the investment may be~~ is prohibited or restricted by any covenant made with or for the benefit of bondholders.

SECTION 28. AMENDMENT. Section 55-08-12 of the North Dakota Century Code is amended and reenacted as follows:

55-08-12. Contracts with federal agencies. The director of ~~state~~ the parks and ~~outdoor recreation sites division~~ may enter into any agreements or contracts with the United States of America or any agency or instrumentality thereof, when the director considers such action advisable or necessary in order to obtain a grant of funds or other aid to be used in connection with the proceeds of the bonds in paying the cost of a project.



SECTION 29. AMENDMENT. Section 55-08-13 of the North Dakota Century Code is amended and reenacted as follows:

55-08-13. Construction of chapter - Statement to be included in bonds. ~~Nothing in this~~ This chapter shall be construed to does not authorize or permit any state board or agency or any state officer ~~thereof~~ to create any indebtedness of the state, or to incur any obligation of any kind or nature except such as shall be an obligation payable solely from the special trust funds to be created under the terms and provisions of this chapter and the revenues herein appropriated to said the funds, nor shall the. The state of North Dakota or any funds or moneys of the state other than said the special trust funds ever may not be deemed obligated for the payment of bonds issued under section 55-08-08 or any part thereof. All such bonds shall must include or shall must have endorsed thereon on the bonds a statement to the effect that the same bonds do not constitute an indebtedness of the state of North Dakota and are payable solely from the revenues appropriated to the state park and tourism fund and revenue bond fund.

SECTION 30. AMENDMENT. Section 55-08-14.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-14.1. Leadership and facilities grants. The ~~North Dakota~~ parks and ~~recreation~~ tourism department shall administer the funds made available to provide for recreational leadership grants and facilities grants in the following manner:

1. One-fourth of all moneys made available to the department for the grants shall must be used for a leadership grant program. This program shall provide enhanced recreational opportunities to state residents, particularly in communities with a population of thirteen thousand or less, regardless of age or state of health. Moneys must be provided on a three-to-one basis for the first year of a grant, one-to-one for the second year of a grant, and one-to-three for the third year of the grant, after which the program must be fully funded locally.
2. Three-fourths of all moneys made available to the department for the grants shall must be used for a facilities grant program. This program shall must provide funds, on a fifty percent matching basis, for political subdivisions to improve, renovate, or construct any type of facility primarily used for community, park, and recreation purposes.

SECTION 31. AMENDMENT. Section 55-08-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-15. Attorney general, state's attorneys, sheriffs, and peace officers to enforce park and recreation laws chapter. The attorney general, and all state's attorneys, sheriffs, and other peace officers shall enforce this chapter.

SECTION 32. AMENDMENT. Section 55-10-04 of the North Dakota Century Code is amended and reenacted as follows:

55-10-04. State historic sites - Registry - State-owned lands administered by the ~~state~~ parks and ~~recreation~~ tourism department or state historical society. The land and water areas enumerated in this section are

hereby designated by law as state historic sites, and this section is a registry of state historic sites situated on property owned by the state and administered by the state parks and recreation tourism department, or state historical society:

1. Fort Rice, located near the town of Fort Rice in Morton County, and consists of seven acres [2.83 hectares].
2. Whitestone Hill battlefield, site of battle of Whitestone Hill, located in Whitestone Hill State Park in Dickey County, and consists of sixty-six acres [26.71 hectares].
3. Fort Abercrombie, located in Fort Abercrombie State Park in Richland County, and consists of twenty-one and ninety-five one-hundredths acres [8.88 hectares].
4. Fort Buford, located in Fort Buford State Park in Williams County, and consists of thirty-six and fifty-three one-hundredth acres [14.78 hectares].
5. Fort McKeen, located in Fort Abraham Lincoln State Park in Morton County.
6. Fort Abraham Lincoln, located in Fort Abraham Lincoln State Park in Morton County.
7. Slant Indian village, located in Fort Abraham Lincoln State Park in Morton County.

SECTION 33. AMENDMENT. Subsection 3 of section 55-11-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Department" means the **North Dakota** parks and recreation tourism department.

SECTION 34. AMENDMENT. Section 55-11-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-11-09. State parks and recreation department Department - Powers and duties - Penalty. In furtherance of the purposes of this chapter and in implementation of the powers and duties ~~elsewhere~~ provided in this chapter, the department ~~shall have~~ has the following additional powers and duties:

1. To formulate policies for the selection, acquisition, use, management, and protection of nature preserves.
2. To determine, supervise, and control the management of nature preserves and to make, publish, and amend ~~from time to time~~ reasonable rules ~~and regulations~~ necessary or advisable for the use and protection of nature preserves and for the business of the department.
3. To encourage and recommend the dedication of natural areas as nature preserves.
4. To acquire land adjacent to any nature preserve when necessary to serve as a protective buffer or service area, or both, for the

nature preserve. No such buffer or service area ~~shall be~~ is a nature preserve unless an estate, interest, or right therein is thereafter dedicated as a nature preserve under ~~the provisions of~~ this chapter.

5. To cooperate and contract with any agency, organization, or individual.
6. To accept, administer, and use for the purposes of this chapter, gifts, grants, devises, and bequests of money, securities, and other property, conditional or unconditional, but the department may refuse any gift, grant, devise, or bequest which is upon terms or conditions unacceptable to it.
7. To make surveys and maintain registers and records of nature preserves and other natural areas within the state.
8. To promote, and to conduct or contract for, research and investigation of nature preserves and other natural areas within the state.
9. To carry on interpretive programs and publish and disseminate information pertaining to nature preserves and other natural areas within the state.
10. To promote and assist in the establishment, restoration, and protection of, and advise in the management of, natural areas, and to foster and aid in the establishment, restoration, and preservation of natural conditions within the state elsewhere than in the system.
11. ~~To authorize payment of travel and other necessary expenses of the members of the advisory board; the travel expenses to be prorated among the five departments.~~
- ~~+2-~~ 12. To design and control the use of official state nature preserve signs and to recommend to the department of transportation locations for such signs.
- ~~+3-~~ 12. To submit to the governor an annual report on or before December thirty-first of each year, which shall account for each nature preserve in the system and make such other reports and recommendations as the department may deem advisable.
- ~~+4-~~ 13. To adopt and enforce suitable rules relating to the protection, care, and use of any state nature preserve or state-owned or state-managed natural area. The violation of any such rule constitutes an infraction.

#### SECTION 35. Tourism division.

1. There is established in the parks and tourism department a tourism division to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's political subdivisions. All functions, powers, and duties of the tourism division of the

economic development commission are transferred to the parks and tourism department.

2. The director of the tourism division shall supervise and control the tourism division.

SECTION 36. Duties of director. The director of the tourism division, within the limits of legislative appropriations, shall:

1. Implement the state's tourism policy;
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division;
3. Measure and forecast visitor volume, receipts, and related social and economic impacts;
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks;
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:
  - a. Display advertising in magazines and newspapers;
  - b. Advertising on radio and television or other advertising media;
  - c. Publishing pamphlets, brochures, and other graphic and pictorial materials; and
  - d. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions;
6. Participate in travel shows;
7. Supervise and administer visitor information centers that receive funding from the state;
8. Develop opportunities for professional and technical education and training in the visitor industry;
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and

12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

SECTION 37. AMENDMENT. Subsection 6 of section 57-39.2-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding the provisions of section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of the tourism division of the parks and tourism department.

SECTION 38. AMENDMENT. Section 61-29-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-29-04. Administration. This chapter must be administered by a Little Missouri River commission composed of the director of the ~~state~~ parks and outdoor recreation ~~department~~ sites division, the state health officer of the state department of health and consolidated laboratories, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

\* SECTION 39. AMENDMENT. Subsection 1 of section 61-33-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of ~~state~~ parks and outdoor recreation sites division, the state game and fish commissioner, and the state health officer, or their representative.

SECTION 40. Parks and tourism department - Administrative rules. Rules adopted by the director of the state parks and recreation department or any other agency or department transferred to the parks and tourism department under this Act remain in effect until specifically amended or repealed.

\* NOTE: Subsection 1 of section 61-33-09 was also amended by section 112 of Senate Bill No. 2050, chapter 231.

\* SECTION 41. REPEAL. Sections 55-08-01 and 55-08-03 of the North Dakota Century Code, and sections 55-11-04 and 55-11-10 of the 1989 Supplement to the North Dakota Century Code are repealed.

Approved April 17, 1991

Filed April 18, 1991

\* NOTE: Section 55-08-03 was amended by section 1 of House Bill No. 1151, chapter 643, and section 55-11-10 was amended by section 95 of Senate Bill No. 2050, chapter 231.

## CHAPTER 641

HOUSE BILL NO. 1044  
(Legislative Council)  
(Interim Jobs Development Commission)

### TOURISM POLICY

AN ACT to adopt a state tourism policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. State tourism policy.

1. The legislative assembly declares that:

- a. This state is endowed with scenic beauty, historical sites, cultural resources, local festivals, attractions, recreational facilities, and a population whose ethnic diversity and traditions are attractive to visitors;
- b. These human and physical resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the state's residents;
- c. Tourism contributes to economic well-being by creating job opportunities, generating revenues for local businesses, and creating new wealth in the economy;
- d. Tourism is an educational and informational medium for personal growth which informs residents about their state's geography and history, their political institutions, their cultural resources, their environment, and about each other;
- e. Tourism instills state pride and a sense of common interest among the state's residents;
- f. Tourism enhances the quality of life and well-being of the state's residents by affording opportunities for recreation, new experiences, and relief from job stress;
- g. Tourism promotes international understanding and good will, and contributes to intercultural appreciation;
- h. Tourism engenders appreciation of the state's cultural, architectural, technological, agricultural, and industrial achievements;
- i. The development and promotion of tourism to and within the state is in the interest of the people of this state;

- j. Tourism should develop in an orderly manner in order to provide the maximum benefit to the state and its residents;
  - k. The development of a strong and competitive state visitor industry depends upon the availability of trained personnel, necessary infrastructure, and a receptive climate for tourism investment; and
  - l. A comprehensive tourism policy is essential if tourism in the state is to grow in an orderly manner.
2. It is the policy of the state to:
    - a. Encourage the orderly growth and development of tourism to, and within, the state;
    - b. Promote the availability of public tourism training to increase the skills and productivity of the tourism labor force and to broaden access to employment opportunities and the visitor industry;
    - c. Encourage a healthy competitiveness in the visitor industry;
    - d. Promote the availability of reliable public highways and transport services between the state's principal tourism destinations and the main tourism generating markets;
    - e. Expand off-season tourism to the state and thereby increase the productivity of the accommodation sector and reduce seasonal layoffs within the visitor and visitor-related industries;
    - f. Promote a sense of history in the state's young people by encouraging family visits to state historic sites, and promoting the preservation and restoration of historic sites, trails, buildings, and districts;
    - g. Promote the mental, emotional, and physical well-being of the American people by encouraging outdoor recreational activities within the state;
    - h. Encourage the talents and strengthen the economic independence of the state's residents by encouraging the preservation of traditional craft skills, the production of handicrafts and native and folk art by private artisans and crafts people, and the holding of craft demonstrations;
    - i. Encourage an optimum of satisfaction and high quality service to visitors;
    - j. Promote a tourist environment that respects our visitors' rights as consumers;
    - k. Afford visitors and residents the best possible conditions of public sanitation;
    - l. Facilitate tourism to, and within, the state by developing an essential tourism infrastructure, providing investment



- incentives to tourism businesses, and encouraging city and county officials to plan for tourism needs and capitalize on local tourism resources;
- m. Promote a better understanding among the state's residents of the social and economic importance of tourism through appropriate formal and informal learning experiences about tourism, and foster among all citizens the capacity for courtesy to visitors;
  - n. Encourage the holding of conventions, trade shows, and expositions throughout the state;
  - o. Promote tourism in a manner that fosters visitors' understanding and respect for native and religious beliefs, customs, and ethnic traditions of the state's residents;
  - p. Monitor tourist impact on the basic human rights of the state's residents and ensure equal access by visitors and residents to public recreational resources;
  - q. Take measures to protect wildlife and natural resources in the preservation of geological, archaeological, and cultural treasures in tourist areas;
  - r. Encourage, assist, and coordinate when possible the tourism activities of local and area promotional organizations; and
  - s. Ensure that the tourism interest of the state is considered fully by state agencies and the legislative assembly in their deliberations; and harmonize to the maximum extent possible, all state activities in support of tourism with the needs of the general public, the political subdivisions of the state, and the visitor industry.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 642

SENATE BILL NO. 2459  
(Senators Kelly, David, Mushik)  
(Representatives Martinson, Jensen)

### **MOTION PICTURE DEVELOPMENT OFFICE**

AN ACT to establish a North Dakota motion picture development office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota motion picture development office - Advisory board. There is established within the department of tourism a North Dakota motion picture development office to promote North Dakota as a location for shooting films, television shows, documentaries, and commercials and to provide technical expertise to persons desiring to use the state as a filming location. The director of the department of tourism shall appoint staff necessary to fulfill the functions and duties of the office and shall also appoint an advisory board of no more than ten members to assist in advising the office from time to time and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except for reimbursement for actual and necessary expenses at the same rate as allowed other state officers, to be paid from funds available to the office within the limits of legislative appropriations.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 643

HOUSE BILL NO. 1151

(Committee on Political Subdivisions)

(At the request of the North Dakota Parks and Recreation Department)

### PARKS AND RECREATION LAND CONVEYANCE

AN ACT to amend and reenact subsection 7 of section 55-08-03 of the North Dakota Century Code, relating to the authority of the director to convey land owned by the state parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 7 of section 55-08-03 of the North Dakota Century Code is amended and reenacted as follows:

7. The director may:

- a. Use any land of the state under his jurisdiction or control so far as is not inconsistent with the laws governing the same.
- b. Acquire by purchase, gift, or condemnation any additional lands or interests in lands required, including lands or interests in adjacent states if authorized by the laws thereof. Only land within or immediately adjacent to already existing state park land under the control of the director shall be subject to condemnation. Condemnation proceedings shall be instituted only upon express approval by the emergency commission. Condemnation may only be used to protect the integrity of state lands that are appropriate for park and recreation purposes.
- c. Subject to prior approval of the attorney general, lease or exchange such lands under the director's jurisdiction or control deemed necessary for the improved management of state parks, state campgrounds, state recreation areas or reserves.
- d. Subject to prior approval of the attorney general, impose such conditions or reservations to such leases or exchanges as the director may deem necessary.
- e. Accept gifts or grants of money or property from the United States or any other source.
- f. Use and apply any money or property so received in accordance with the terms of the gift or grant so far as is not inconsistent with the provisions of this chapter or other laws.
- g. Act in behalf of the state as sponsor for any project undertaken or authorized by the United States.

\* NOTE: Section 55-08-03 was repealed by section 41 of Senate Bill No. 2054, chapter 640.

- h. Make any sponsor's contribution required for any projects out of moneys appropriated or otherwise made available therefor.
- i. Cooperate with the United States or any adjacent state or any authorized agency of either in planning, acquiring, constructing, maintaining, and operating any project upon such terms and conditions as the director may deem proper, not inconsistent with the laws of this state.
- j. Subject to prior approval of the attorney general, convey lands or interest in land for recreational purposes to other state agencies and political subdivisions the director may deem necessary.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 644

SENATE BILL NO. 2232  
(Committee on Natural Resources)  
(At the request of the North Dakota Parks and  
Recreation Department)

### STATE PARK VEHICLE FEES RETENTION

AN ACT to amend and reenact sections 55-08-06 and 55-08-07 of the North Dakota Century Code, relating to permit fees for vehicles entering state parks; and to repeal section 55-08-06.1 of the North Dakota Century Code, relating to motor vehicle permits and fees collected by the state parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-06. Permits for motor vehicles. ~~No~~ Unless authorized by the director, no motor vehicle may enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of such motor vehicle shall display upon request a permit issued as provided in this chapter; ~~provided; however, that this does not apply to any motor vehicles entering any state park for the purpose of parking thereon during the performance of any historic drama.~~ Permits must be of a size, form, and character as the director shall prescribe, and the director shall procure permits for each calendar year which by appropriate language must grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding, and used on or at any time after that date until May first of the year following the calendar year for which issued. Such permits in each category must be numbered consecutively for each year of issue. A maximum fee of fifteen dollars may be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of three dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:

1. The director may allow other agencies or organizations that have leased state parks, state recreation areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions can be made after state park revenue bonds are issued and while such bonds are outstanding.

\* SECTION 2. AMENDMENT. Section 55-08-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07. State park fund - Appropriation. All revenues collected as permit fees, admissions, use charges, rentals, compensation for concession agreements, or otherwise, with the exception of revenue from bequests, trusts, or gifts, and with the exceptions noted in subsections 1 and 2 of section 55-08-06, must be placed in the state park fund, together with all proceeds of bonds issued pursuant to section 55-08-08. This fund must be maintained by the state treasurer as a special trust fund and is hereby irrevocably appropriated and must be used and disbursed solely for the following purposes:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service must be credited to a special operating account, from which must be paid only the current, reasonable and necessary cost of operating such service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable to the furnishing of such service. The director shall incur no operating cost for any building, structure, or facility leased, and such leases must provide for the payment of such costs by the lessee and for the payment of a net rental in addition thereto. No such lease rentals and no motor vehicle permit fees may be credited to operating accounts.
2. To provide for the payment and security of the principal and interest when due on any state park revenue bonds issued pursuant to section 55-08-08. For this purpose the treasurer shall credit to a special service account within the state park fund, as received, all bond proceeds, all motor vehicle permit fees and all rental payments by lessees, and all net income remaining in the operating account for each special service at the end of each month, in excess of the costs of operation thereof which are then payable or are to become due and payable within one month, and shall transfer from this fund and account to the revenue bond fund described in section 55-08-09, whenever necessary, so much of the revenues then on hand as may be required, or all thereof, if necessary, to produce a balance in the revenue bond fund equal to the sum of the interest due and to become due within eighteen months plus the principal due and to become due within twenty-four months thereafter on all outstanding series of such bonds.
3. To finance the acquisition, construction, reconstruction, improvement, betterment, or extension of park properties, for projects within state parks, state campgrounds, state recreation areas, and reserves including, but without limitation, the acquisition of land and water, the erection of buildings and structures, and the improvement of properties held in trust for or leased by the state of North Dakota, when and as authorized from time to time by the legislative assembly of the state of North Dakota. For this purpose the director shall authorize the disbursement from time to time of bond proceeds and revenues received in the fund; provided, that no such disbursements may be made in excess of the amounts of revenue bonds issued and other

\* NOTE: Section 55-08-07 was also amended by section 21 of Senate Bill No. 2054, chapter 640.

funds granted or appropriated and received for this purpose, and no such disbursements may be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

4. For any other park purpose for which funds have been appropriated by the legislative assembly to the North Dakota parks and recreation department; provided, that no such disbursement may be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

SECTION 3. REPEAL. Section 55-08-06.1 of the North Dakota Century Code is repealed.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 645

SENATE BILL NO. 2057  
(Legislative Council)  
(Interim Jobs Development Commission)

### SENIOR CITIZEN PARK PERMITS

AN ACT to amend and reenact section 55-08-06.2 of the North Dakota Century Code, relating to senior citizen entrance permits to state parks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-06.2 of the North Dakota Century Code is amended and reenacted as follows:

55-08-06.2. North Dakota senior citizens passport. The director shall establish procedures providing for the issuance of an annual entrance permit to be known as the "North Dakota senior citizens passport". ~~Such~~ The permit ~~shall~~ must be issued to any resident of North Dakota who is ~~sixty~~ sixty-five years of age or older and who ~~shall apply~~ applies for ~~such a~~ permit. ~~Such~~ The permit ~~shall be~~ is nontransferable, ~~shall be issued without charge, and shall entitle~~ entitles the bearer and any person accompanying the bearer in a single, private, noncommercial vehicle to entry into any state park, state recreation area, or reserve ~~without charge. No other free permits shall be issued to any person,~~ and must be issued for fifty percent of the regular permit fee. The provisions of this section ~~which that~~ provide a ~~waiver~~ reduction of fees ~~shall be~~ are effective notwithstanding any provisions to the contrary contained in this chapter.

Approved April 5, 1991  
Filed April 8, 1991



## CHAPTER 646

SENATE BILL NO. 2119

(Committee on Appropriations)

(At the request of the North Dakota Parks and Recreation Department)

### PARKS AND RECREATION GIFTS

AN ACT to amend and reenact section 55-08-07.2 of the North Dakota Century Code, relating to the use of the state parks and recreation department gift fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 55-08-07.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-07.2. State parks and recreation department gift fund - Fund use. There is established in the state treasury a special fund designated as the state parks gift fund. All donations to the state parks and recreation department valued at over one thousand dollars in the form of gifts, trusts, and bequests of property or money, and any interest accruing thereon, must be placed in the state parks gift fund and is hereby appropriated to the department. The fund may be used and disbursed by the state parks and recreation department, with the approval of the state emergency commission, in accordance with the terms of the donation as determined by the director.

Approved April 2, 1991

Filed April 4, 1991

\* NOTE: Section 55-08-07.2 was also amended by section 23 of Senate Bill No. 2054, chapter 640.

## CHAPTER 647

HOUSE BILL NO. 1382  
 (Representatives G. Berg, Starke, Jacobson)  
 (Senators Langley, Meyer)

### FORT TOTTEN HISTORIC SITE TRANSFER

AN ACT to authorize the state historical society to transfer the Fort Totten state historic site; to amend and reenact sections 54-01-09.1, 55-10-03, and 55-10-05 of the North Dakota Century Code, relating to the Fort Totten state historic site; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of Fort Totten state historic site authorized. The state historical society of North Dakota may transfer by deed and title that part of lot seven, section sixteen, township one hundred fifty-two north, range sixty-five west, fifth principal meridian, described as follows: beginning at a point 396.4 feet east of the southwest corner of section sixteen, then north two degrees twenty minutes east, a distance of 134.1 feet, then south eighty-seven degrees thirty-six minutes east, a distance of 652.7 feet, then south zero degrees nineteen minutes west, a distance of 106.5 feet to the south line of section sixteen, then west on the section line, a distance of 657.1 feet to the point of beginning, containing 1.81 acres, more or less, and that part of the northwest quarter of the northwest quarter, section twenty-one, township one hundred fifty-two north, range sixty-five west, fifth principal meridian, described as follows: beginning at a point 396.4 feet east of the northwest corner of section twenty-one, then east on the section line, a distance of 657.1 feet, then south zero degrees nineteen minutes west, a distance of 497.5 feet, then north eighty-seven degrees forty-eight minutes west, a distance of 679.7 feet, then north two degrees twenty minutes east, a distance of 469.0 feet to the point of beginning, containing 7.42 acres, more or less, to the national park service, department of the interior, with the understanding that it will further develop the site as a national historic site.

SECTION 2. AMENDMENT. Section 54-01-09.1 of the North Dakota Century Code is amended and reenacted as follows:

54-01-09.1. State offenses - Concurrent jurisdiction ceded to the United States. Concurrent jurisdiction is hereby ceded to the United States over offenses, as defined in section 12.1-01-04, when committed within the boundaries of the tracts of land designated as:

1. Theodore Roosevelt national park.
2. Fort Union trading post national historic site.
3. Knife River Indian villages national historic site.
4. Fort Totten national historic site.

SECTION 3. AMENDMENT. Section 55-10-03 of the North Dakota Century Code is amended and reenacted as follows:

55-10-03. State historic sites - Registry. The land and water areas enumerated in this section are hereby designated by law as state historic sites, and this section shall be is a registry of state historic sites situated on property owned by the state, its governmental subdivisions:

- 1- Camp Hancock in Burleigh County on main street opposite first street; Bismarck; and consists of ninety-two one-hundredths of an acre {3.723 square meters}.
- 2- Camp Grant; in Stutsman County; and consists of one acre {0.40 hectares} in section twenty-four; township one hundred forty-three; range sixty-nine.
- 3- Camp Kimball; in Foster County; and consists of thirteen one-hundredths of an acre {526.09 square meters} in section sixteen; township one hundred forty-five; range sixty-seven.
- 4- Camp Sheardown; in Barnes County; three miles {4.83 kilometers} southeast of Valley City; and consists of three one-hundredths of an acre {121.41 square meters} in section two; township one hundred thirty-nine; range fifty-eight.
- 5- Camp Weiser; in Barnes County; thirteen miles {20.92 kilometers} west of Enderlin; and consists of three one-hundredths of an acre {121.41 square meters} in section thirty-three; township one hundred thirty-seven; range fifty-seven.
- 6- Camp Gorning; in Barnes County; seven miles {11.27 kilometers} northeast of Bazey; and consists of thirty one-hundredths of an acre {1,214.06 square meters} in section eight; township one hundred forty-three; range fifty-eight.
- 7- Camp Whitney; in Kidder County; near Fappen; and consists of four acres {1.62 hectares} in section thirty-one; township one hundred forty-one; range seventy.
- 8- Bismarck-Deadwood stage trail; in Morton County; and consists of three one-hundredths of an acre {121.41 square meters} in section thirty-four; township one hundred thirty-five; range eighty-four.
- 9- Ghaska; in Burleigh County; three miles {4.83 kilometers} north of Briscoil; and consists of five one-hundredths of an acre {202.34 square meters} in section thirty-four; township one hundred forty; range seventy-five.
- 10- Gingras trading post; in Pembina County; north and east of Walhalla; and consists of seventy-six one-hundredths of an acre {3,075.61 square meters} in sections sixteen; seventeen; twenty; and twenty-one; township one hundred sixty-three; range fifty-six.
- 11- Lake Jessie; in Griggs County; and consists of twenty-nine one-hundredths of an acre {1,173.59 square meters} in section twenty-two; township one hundred forty-seven; range sixty.

12. Maple Creek crossing, in Cass County, near Chaffee, and consists of thirty-eight one-hundredths of an acre {1,537.8} square meters} in section thirty-six, township one hundred thirty-eight, range fifty-three.
13. Medicine Butte, in Grant County, south of Elgin, and consists of a dance ring two hundred feet {60.96 meters} in diameter in section thirty-one, township one hundred thirty-three, range eighty-eight.
14. David Thompson, in McHenry County, and consists of sixty-eight one-hundredths of an acre {2,751.86 square meters} in section thirty-one, township one hundred fifty-four, range seventy-eight.
15. Birch Creek campsite, in Barnes County, two miles {3.22 kilometers} east of Hastings, and consists of one acre {0.40 hectares} in section eighteen, township one hundred thirty-seven, range fifty-eight.
16. Buffalo Creek campsite, in Cass County, two miles {3.22 kilometers} west of Buffalo, and consists of twenty-five one-hundredths of an acre {1,011.71 square meters} in section twenty-two, township one hundred forty, range fifty-five.
17. Burman, in Kidder County, ten miles {16.09 kilometers} north of Fappen, and consists of one-hundredths of an acre {40.47 square meters} in section twenty-four, township one hundred forty-one, range seventy-one.
18. Camp Arnold, in Barnes County, four miles {6.44 kilometers} north of Oriska, and consists of ten one-hundredths of an acre {404.69 square meters} in section thirty-two, township one hundred forty-one, range fifty-six.
19. Camp Atchison, in Griggs County, near Valley City, and consists of forty one-hundredths of an acre {1,618.74 square meters} in section twenty-eight, township one hundred forty-seven, range sixty.
20. Camp Buell, in Sargent County, and consists of five acres {2.02 hectares} in section sixteen, township one hundred thirty-two, range fifty-four.
21. Sitting Bull, in Sioux County, and consists of five acres {2.02 hectares} in section twelve, township one hundred thirty, range eighty.
22. Steamboat Warehouse, in Burleigh County, and consists of three and twenty-one one-hundredths acres {1.30 hectares} in section thirty-one, township one hundred thirty-nine, range eighty.
23. Sully Corral, in Stark County, and consists of four and sixty-two one-hundredths acres {1.87 hectares} in section ten, township one hundred thirty-seven, range ninety-one.
24. Cannonball stage station, in Grant County, and consists of two and one-half acres {1.01 hectares} in section twenty-nine, township one hundred thirty-two, range eighty-six.

25. McPhails Butte, in Kidder County, seven miles {11.27 kilometers} north of Fappen, and consists of thirty-two one-hundredths of an acre {1-295-00 square meters} in section four, township one hundred forty, range seventy-one.
26. Writing Rock, in Divide County, and consists of ten acres {4-05 hectares} in section twelve, township one hundred sixty-one, range one hundred two.
27. Fort Ransom, in Ransom County near the town of Fort Ransom, and consists of six and forty-two one-hundredths acres {2-60 hectares} in section eleven, township one hundred thirty-five, range fifty-eight.
28. Fort Mandan, in McBean County, four miles {6-44 kilometers} west of Washburn, and consists of thirty and forty-seven one-hundredths acres {2-33 hectares} in sections eleven and twelve, township one hundred forty-four, range eighty-four.
29. Fort Seward, in Stutsman County, in the city of Jamestown, and consists of three and fifty-six one-hundredths acres {1-44 hectares} in section twenty-six, township one hundred forty, range sixty-four.
30. Fort Dilts, in Bowman County, nine miles {14-48 kilometers} northwest of Rhame, and consists of eight and twenty-five one-hundredths acres {3-34 hectares} in section two, township one hundred thirty-two, range one hundred five.
31. Chaboillez trading post, in Pembina state park in Pembina County, and consists of three and one-half acres {1-42 hectares} in block B in Pembina.
32. Chateau de Mores, in Chateau de Mores state historic site in Billings County, and consists of one hundred twenty-eight and twenty-six one-hundredths acres {51-90 hectares} in section twenty-seven, township one hundred forty, range one hundred two.
33. de Mores packing plant site, in Chateau de Mores state historic site in Billings County.
34. Fort Fotten, twelve miles {19-31 kilometers} southwest of Devils Lake in Benson County, and consists of nine and twenty-three one-hundredths acres {3-74 hectares} in section sixteen, township one hundred fifty-two, range sixty-five.
35. Fort Clark trading post, located at Fort Clark state historic site in Mercer County, and consists of forty-six and ninety-three one-hundredths acres {18-99 hectares} in section thirty-six, township one hundred forty-four, range eighty-four.
36. Kittson trading post, located at Waihalla in Pembina County, and consists of five and eighty-eight one-hundredths acres {2-14 hectares} in section twenty-nine, township one hundred sixty-three, range fifty-six.

37. Growley flint quarry, located seventeen miles {27.36 kilometers} north of Hebron in Mercer County, and consists of two and thirty-five one-hundredths acres {0.95 hectares} in section one, township one hundred forty-two, range ninety.
38. Double Bitch Indian village, located twelve miles {19.31 kilometers} north of Bismarck in Burleigh County, and consists of thirty-seven acres {14.97 hectares} in sections twenty-one and twenty-two, township one hundred forty, range eighty.
39. Huff Indian village, located one mile {1.61 kilometers} south of Huff in Morton County, and consists of fourteen acres {5.67 hectares} in sections five and eight, township one hundred thirty-six, range seventy-nine.
40. Molander Indian village, located three miles {4.83 kilometers} north of Price in Oliver County, and consists of a twelve-acre {4.86 hectare} tract in section seventeen, township one hundred forty-two, range eighty-one.
41. Menoken Indian village, located one and one-half miles {2.41 kilometers} north of Menoken in Burleigh County, and consists of thirteen and seventy one-hundredths acres {5.54 hectares} in section twenty-two, township one hundred thirty-nine, range seventy-eight.
42. Hudson historic site, in Dickey County, four miles {6.44 kilometers} southwest of Oakes, and consists of one and one-half acres {0.61 hectares} in section six, township one hundred thirty, range fifty-nine.
43. Oak Lawn church site, in Pembina County, and consists of fifty-five one-hundredths of an acre {2,225.77 square meters} in section nineteen, township one hundred sixty-one, range fifty-six. It marks the site of the church built by Reverend Ransom Waite in 1886.
44. Palmer's spring, in Benson County near Esmond, and consists of two and eighty-three one-hundredths acres {1.15 hectares} in section fourteen, township one hundred fifty-one, range seventy-one.
45. Brenner crossing, in Eddy County, and consists of twenty-five one-hundredths of an acre {1,011.71 square meters} in section one, township one hundred forty-nine, range sixty-four.
46. Saint Claude, in Rolette County, and consists of forty acres {16.19 hectares} in section three, township one hundred sixty-three, range seventy.
47. Standing Rock, in Ransom County, and consists of one-hundredths of an acre {40.47 square meters}, more or less, in the southwest quarter of section six, township one hundred thirty-six, range fifty-seven.
48. Wadson site, in Barnes County, and consists of one acre {0.40 hectare} in section twenty-four, township one hundred thirty-seven, range fifty-eight.

49. Sweden, in Walsh County, and consists of one-hundredths of an acre [40.47 square meters], more or less, in section thirty-six, township one hundred fifty-eight, range fifty-four.
50. Lake Johnson, in Griggs County, and consists of four one-hundredths of an acre [161.87 square meters], more or less, in section twenty-three, township one hundred forty-five, range fifty-nine.
1. Birch Creek campsite, in Barnes County, two miles [3.22 kilometers] east of Hastings, which consists of one acre [0.40 hectare] in section eighteen, township one hundred thirty-seven, range fifty-eight.
  2. Bismarck-Deadwood stage trail, in Morton County, which consists of three one-hundredths of an acre [121.41 square meters] in section thirty-four, township one hundred thirty-five, range eighty-four.
  3. Brenner crossing, in Eddy County, which consists of twenty-five one-hundredths of an acre [1011.71 square meters] in section one, township one hundred forty-nine, range sixty-four.
  4. Buffalo Creek campsite, in Cass County, two miles [3.22 kilometers] west of Buffalo, which consists of twenty-five one-hundredths of an acre [1011.71 square meters] in section twenty-two, township one hundred forty, range fifty-five.
  5. Burman, in Kidder County, ten miles [16.09 kilometers] north of Tappen, which consists of one-hundredths of an acre [40.47 square meters] in section twenty-four, township one hundred forty-one, range seventy-one.
  6. Camp Arnold, in Barnes County, four miles [6.44 kilometers] north of Oriska, which consists of ten one-hundredths of an acre [404.69 square meters] in section thirty-two, township one hundred forty-one, range fifty-six.
  7. Camp Atchison, in Griggs County, near Valley City, which consists of forty one-hundredths of an acre [1618.74 square meters] in section twenty-eight, township one hundred forty-seven, range sixty.
  8. Camp Buell, in Sargent County, which consists of five acres [2.02 hectares] in section sixteen, township one hundred thirty-two, range fifty-four.
  9. Camp Corning, in Barnes County, seven miles [11.27 kilometers] northeast of Dazey, which consists of thirty one-hundredths of an acre [1214.06 square meters] in section eight, township one hundred forty-three, range fifty-eight.
  10. Camp Grant, in Stutsman County, which consists of one acre [0.40 hectare] in section twenty-four, township one hundred forty-three, range sixty-nine.
  11. Camp Hancock, in Burleigh County, on main avenue opposite first street, Bismarck, which consists of ninety-two one-hundredths of an acre [3723 square meters].

12. Camp Kimball, in Foster County, which consists of thirteen one-hundredths of an acre [526.09 square meters] in section sixteen, township one hundred forty-five, range sixty-seven.
13. Camp Sheardown, in Barnes County, three miles [4.83 kilometers] southeast of Valley City, which consists of three one-hundredths of an acre [121.41 square meters] in section two, township one hundred thirty-nine, range fifty-eight.
14. Camp Weiser, in Barnes County, thirteen miles [20.92 kilometers] west of Enderlin, which consists of three one-hundredths of an acre [121.41 square meters] in section thirty-three, township one hundred thirty-seven, range fifty-seven.
15. Camp Whitney, in Kidder County, near Tappen, which consists of four acres [1.62 hectares] in section thirty-one, township one hundred forty-one, range seventy.
16. Cannonball stage station, in Grant County, which consists of two and one-half acres [1.01 hectares] in section twenty-nine, township one hundred thirty-two, range eighty-six.
17. Chaboillez trading post, in Pembina County, in Pembina state park, which consists of three and one-half acres [1.42 hectares] in block B in Pembina.
18. Chaska, in Burleigh County, three miles [4.83 kilometers] north of Driscoll, which consists of five one-hundredths of an acre [202.34 square meters] in section thirty-four, township one hundred forty, range seventy-five.
19. Chateau de Mores, in Billings County, in Chateau de Mores state historic site, which consists of one hundred twenty-eight and twenty-six one-hundredths acres [51.90 hectares] in section twenty-seven, township one hundred forty, range one hundred two.
20. Crowley flint quarry, in Mercer County, seventeen miles [27.36 kilometers] north of Hebron, which consists of two and thirty-five one-hundredths acres [0.95 hectare] in section one, township one hundred forty-two, range ninety.
21. David Thompson, in McHenry County, which consists of sixty-eight one-hundredths of an acre [2751.86 square meters] in section thirty-one, township one hundred fifty-four, range seventy-eight.
22. de Mores packing plant site, in Billings County, in Chateau de Mores state historic site.
23. Double Ditch Indian village, in Burleigh County, twelve miles [19.31 kilometers] north of Bismarck, which consists of thirty-seven acres [14.97 hectares] in sections twenty-one and twenty-two, township one hundred forty, range eighty.
24. Fort Clark trading post, in Mercer County, at Fort Clark state historic site, which consists of forty-six and ninety-three one-hundredths acres [18.99 hectares] in section thirty-six, township one hundred forty-four, range eighty-four.



25. Fort Dilts, in Bowman County, nine miles [14.48 kilometers] northwest of Rhame, which consists of eight and twenty-five one-hundredths acres [3.34 hectares] in section two, township one hundred thirty-two, range one hundred five.
26. Fort Mandan, in McLean County, four miles [6.44 kilometers] west of Washburn, which consists of thirty and forty-seven one-hundredths acres [12.33 hectares] in sections eleven and twelve, township one hundred forty-four, range eighty-four.
27. Fort Ransom, in Ransom County, near the town of Fort Ransom, which consists of six and forty-two one-hundredths acres [2.60 hectares] in section eleven, township one hundred thirty-five, range fifty-eight.
28. Fort Seward, in Stutsman County, in Jamestown, which consists of three and fifty-six one-hundredths acres [1.44 hectares] in section twenty-six, township one hundred forty, range sixty-four.
29. Gingras trading post, in Pembina County, north and east of Walhalla, which consists of seventy-six one-hundredths of an acre [3075.61 square meters] in sections sixteen, seventeen, twenty, and twenty-one, township one hundred sixty-three, range fifty-six.
30. Hudson historic site, in Dickey County, four miles [6.44 kilometers] southwest of Oakes, which consists of one and one-half acres [0.61 hectare] in section six, township one hundred thirty, range fifty-nine.
31. Huff Indian village, in Morton County, one mile [1.61 kilometers] south of Huff, which consists of fourteen acres [5.67 hectares] in sections five and eight, township one hundred thirty-six, range seventy-nine.
32. Kittson trading post, in Pembina County, at Walhalla, which consists of five and eighty-eight one-hundredths acres [2.14 hectares] in section twenty-nine, township one hundred sixty-three, range fifty-six.
33. Lake Jessie, in Griggs County, which consists of twenty-nine one-hundredths of an acre [1173.59 square meters] in section twenty-two, township one hundred forty-seven, range sixty.
34. Lake Johnson, in Griggs County, which consists of four one-hundredths of an acre [161.87 square meters], more or less, in section twenty-three, township one hundred forty-five, range fifty-nine.
35. Maple Creek crossing, in Cass County, near Chaffee, which consists of thirty-eight one-hundredths of an acre [1537.81 square meters] in section thirty-six, township one hundred thirty-eight, range fifty-three.
36. McPhails Butte, in Kidder County, seven miles [11.27 kilometers] north of Tappen, which consists of thirty-two one-hundredths of an acre [1295.00 square meters] in section four, township one hundred forty, range seventy-one.

37. Medicine Butte, in Grant County, south of Elgin, which consists of a dance ring two hundred feet [60.96 meters] in diameter in section thirty-one, township one hundred thirty-three, range eighty-eight.
38. Menoken Indian village, in Burleigh County, one and one-half miles [2.41 kilometers] north of Menoken, which consists of thirteen and seventy one-hundredths acres [5.54 hectares] in section twenty-two, township one hundred thirty-nine, range seventy-eight.
39. Molander Indian village, in Oliver County, three miles [4.83 kilometers] north of Price, which consists of a twelve-acre [4.86-hectare] tract in section seventeen, township one hundred forty-two, range eighty-one.
40. Oak Lawn church site, in Pembina County, which consists of fifty-five one-hundredths of an acre [2225.77 square meters] in section nineteen, township one hundred sixty-one, range fifty-six.
41. Palmer's spring, in Benson County, near Esmond, which consists of two and eighty-three one-hundredths acres [1.15 hectares] in section fourteen, township one hundred fifty-one, range seventy-one.
42. Saint Claude, in Rolette County, which consists of forty acres [16.19 hectares] in section three, township one hundred sixty-three, range seventy.
43. Sitting Bull, in Sioux County, which consists of five acres [2.02 hectares] in section twelve, township one hundred thirty, range eighty.
44. Standing Rock, in Ransom County, which consists of one-hundredths of an acre [40.47 square meters], more or less, in the southwest quarter of section six, township one hundred thirty-six, range fifty-seven.
45. Steamboat Warehouse, in Burleigh County, which consists of three and twenty-one one-hundredths acres [1.30 hectares] in section thirty-one, township one hundred thirty-nine, range eighty.
46. Sully Corral, in Stark County, which consists of four and sixty-two one-hundredths acres [1.87 hectares] in section ten, township one hundred thirty-seven, range ninety-one.
47. Sweden, in Walsh County, which consists of one-hundredths of an acre [40.47 square meters], more or less, in section thirty-six, township one hundred fifty-eight, range fifty-four.
48. Wadson site, in Barnes County, which consists of one acre [0.40 hectare] in section twenty-four, township one hundred thirty-seven, range fifty-eight.
49. Writing Rock, in Divide County, which consists of ten acres [4.05 hectares] in section twelve, township one hundred sixty-one, range one hundred two.

SECTION 4. AMENDMENT. Section 55-10-05 of the North Dakota Century Code is amended and reenacted as follows:

55-10-05. State historic sites - Registry - Federally owned lands. The land and water areas enumerated in this section are hereby designated by law as state historic sites and this section ~~shall be~~ is a registry of state historic sites situated on property owned by the United States government:

1. Theodore Roosevelt Maltese Cross cabin in Billings County, located within the boundaries of Theodore Roosevelt National Memorial Park.
2. Theodore Roosevelt Elkhorn ranch in Billings County, located within the boundaries of Theodore Roosevelt National Memorial Park.
3. The site of Fort Union in Williams County, located within the boundaries of Fort Union trading post.
4. The site of Fort Totten in Benson County, located within the boundaries of Fort Totten national historic site.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on the date the governor certifies to the secretary of state and to the state historical board that the Congress of the United States has enacted legislation accepting the transfer of the Fort Totten state historic site to the United States for inclusion in the national park system as a national historic site. The secretary of state shall forward a copy of the governor's certification to the legislative council, with a notation indicating the effective date of this Act.

Approved March 27, 1991  
Filed March 28, 1991

# TAXATION

## CHAPTER 648

HOUSE BILL NO. 1218  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### TAX RETURN ADMINISTRATION PROVISIONS

AN ACT to create and enact two new sections to chapter 57-01 and a new section to chapter 57-38 of the North Dakota Century Code, relating to extension of the period of time for the tax commissioner to make an assessment if a subpoena is issued and failure of a taxpayer to complete an income tax return or supply information on changes under a federal income tax return; to amend and reenact sections 57-38-33, 57-38-38, 57-38-40, 57-39.2-15, 57-39.2-15.1, 57-39.2-25, 57-51-09, and 57-51-19 of the North Dakota Century Code, relating to failure to complete returns or supply information, failure to file a sales tax return, protest of a sales tax assessment, extension of time to perform a sales tax audit, payment of sales tax refunds, assessment of additional oil and gas production tax, and claims for credit or refund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted to read as follows:

Extension of period of time to make assessments. If the tax commissioner issues a subpoena to a taxpayer, the period of time for making an assessment against that taxpayer is automatically extended by a period equal to the time between the issuance of the subpoena to final resolution. Final resolution occurs when a court dismisses the subpoena or the taxpayer complies with the subpoena.

SECTION 2. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Failure to complete return or supply information. If the tax commissioner is of the opinion that any taxpayer has failed to include in a return as filed, or to provide during the course of an audit, information necessary to determine a North Dakota tax liability, the tax commissioner may require from the taxpayer an amended return or supplementary information as is necessary to properly and accurately determine a taxpayer's North Dakota tax liability, in the form prescribed by the tax commissioner. If the taxpayer fails to file the amended return or to furnish the supplementary information, the tax commissioner, after thirty days' notice, may determine the North Dakota tax liability from the best information available and assess any tax due, including interest and penalty. The taxpayer may protest the determination under the protest procedure provided for the type of tax assessed.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Requirement to report federal changes.

1. If a person's federal taxable income or federal income tax liability for any taxable year is changed or corrected by the United States internal revenue service, or other competent authority, the person shall report the changes or corrections within ninety days after the date of the final determination of them by filing an amended state income tax return or other information as required by the tax commissioner.
2. Notwithstanding the provisions of subsection 1, if a person files an amended federal income tax return for any taxable year, the person shall file an amended state income tax return and a copy of the amended federal income tax return within ninety days after the amended federal income tax return is filed.

SECTION 4. AMENDMENT. Section 57-38-33 of the North Dakota Century Code is amended and reenacted as follows:

57-38-33. Failure to complete return or supply information. If the tax commissioner shall be of the opinion that any person has failed to include in a return as filed, or to provide during the course of an audit, either intentionally or through error or for any other reason, information necessary to properly determine North Dakota taxable income, the tax commissioner may require from such that person an amended return or such any supplementary information as is necessary to properly and accurately determine a person's North Dakota taxable income, in such the form as the tax commissioner shall prescribe. If the person fails or refuses to file the amended return or to furnish the supplementary information requested, the tax commissioner may, after thirty days' notice, determine the North Dakota taxable income of the person from the best information available and assess any tax due, including interest and penalty. The decision of the tax commissioner to assess the tax, including interest and penalty pursuant to section 57-38-45, shall be final and payment of the amount due shall be made upon demand. If the tax commissioner finds that the taxpayer's failure to provide an amended return or supplementary information was unreasonable and willful, the assessment of tax is final as to the tax commissioner. A North Dakota district court may reverse the tax commissioner's assessment only if it finds that the taxpayer's failure was not willful or that the tax commissioner's request was unreasonable.

SECTION 5. AMENDMENT. Section 57-38-38 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-38. Tax commissioner to audit returns and assess tax.

1. Except as otherwise provided in this section, the tax commissioner shall proceed to audit the returns of taxpayers and, not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later, assess the tax and, if any additional tax is found due, shall notify the taxpayer in detail as to the reason for the increase.

2. ~~As~~ For taxable years beginning before January 1, 1991, as to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, the tax commissioner shall have six years after the due date of the return or six years after the return was filed, whichever period expires later, to audit the return of such the corporation or other person and assess any additional tax found due ~~and to notify such corporation or other person in detail as to the reason for the assessment of the additional tax.~~ Effective for the taxable years beginning after December 31, 1990, and before January 1, 1993, the tax commissioner has five years to audit the return of the corporation or other person and assess any additional tax found due. Effective for taxable years beginning after December 31, 1992, and before January 1, 1995, the time period for assessment under this subsection is four years. Effective for taxable years beginning after December 31, 1994, the time period for assessment under this subsection is three years.
- ~~2-~~ 3. If there is a change in taxable income or ~~adjusted federal~~ income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or ~~adjusted federal~~ income tax liability stated in the return as filed, any additional tax determined to be due may be assessed any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
- ~~3-~~ 4. If a person has failed to file a return of income as required by this chapter, the tax may be assessed ~~pursuant to~~ under section 57-38-33 or subsection 6 of section 57-38-45, or an action brought ~~pursuant to~~ under section 57-38-47 at any time within ten years after the due date of the return.
- ~~4-~~ 5. Where false or fraudulent information is given in the return, or where the failure to file a return is due to the fraudulent intent or the willful attempt of the taxpayer in any manner to evade the tax, the time limitations in this section shall not apply, and the tax may be assessed at any time.
- ~~5-~~ 6.
- a. ~~If the amount of taxable income or federal income tax liability for any year of any person as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other office of the United States or other competent authority; or where a renegotiation of a contract or subcontract within the United States results in a change in taxable income or federal income tax liability; the person shall report the changed or corrected income; or the changed or corrected federal income tax liability; or the results of the renegotiation; within thirty days after the final determination of the change or correction or renegotiation; by filing an amended state income tax return; or other information as required by the tax commissioner and shall concede the accuracy of the determination or state wherein it is erroneous.~~
- b. ~~Any person filing an amended return with such department as set forth above shall also file within thirty days thereafter an amended state income tax return with a copy of such federal~~

amended return with the tax commissioner. If the a person files an amended state income tax return or a report disclosing changes or corrections to federal taxable income or to federal income tax liability, the assessment of a deficiency may be made at any time within two years from the date such report or amended return was filed by the person, or other information as required by the tax commissioner, pursuant to section 3 of this Act, the tax commissioner has two years after the amended state income tax return, or other information as required by the tax commissioner, is filed to audit the state income tax return and assess any additional state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or that is attributable to the amended federal income tax return, even though other time periods prescribed in this section for the assessment of tax may have expired during the thirty day period. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired as of the end of the two-year period prescribed in this subsection.

c- b. Any For taxable years beginning before January 1, 1991, any person who consents to an extension of time for the assessment of taxes with the internal revenue service shall be presumed to have consented to a similar extension of time for the assessment or refund of state income tax with the state tax commissioner. Refunds under this subdivision are limited to tax years beginning after July 1, 1983.

d- Failure to report such changed or corrected federal taxable income or federal income tax liability or to file amended state income tax returns with a copy of such amended federal return within the prescribed thirty days shall suspend the running of the period of limitation for making an additional assessment for state income tax purposes.

7. If a person fails to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, the tax commissioner may assess any additional tax found due which is attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, or which is attributable to the amended federal income tax return, at any time, even though other time periods prescribed in this section may have expired.

6- 8. Where before the expiration of the time periods prescribed for the assessment of tax in subsections 1 and 2 of this section, the tax commissioner and the a person consent in writing to an extension of time for the assessment of the tax, the tax an assessment of additional state income tax may be assessed made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. Provided: that if the If a person refuses to agree to such consent to an extension of time or a renewal thereof, the tax commissioner may issue make an assessment based on the best information available. The period agreed upon in this subsection, including

extensions, expires upon issuance of an assessment by the tax commissioner.

- 7- 9. The filing of an amended return before the expiration of the time limitation provided for in this chapter shall add an additional time period of two years for assessment of a deficiency or the issuance of a credit or refund to the time limitation still remaining as of the date of filing of the amended return. Except for an amended return required to be filed under section 3 of this Act, if a person files an amended state income tax return within the time periods prescribed in subsections 1 and 2 of this section or subsection 1 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax found to be due, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 6. AMENDMENT. Section 57-38-40 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-40. Claim for credit or refund.

1. Except as otherwise provided in subsection 2 this section, a taxpayer person may apply to the tax commissioner file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires last. Refund claims properly verified and approved by the tax commissioner shall be audited and paid as are other claims against the state. As to any corporation or other person whose principal place for managing or directing a business is outside North Dakota, if the period for assessment remains open under subsection 2 of section 57-38-38, the period of time for filing of a claim for credit or refund will remain open for the same period prescribed in subsection 2 of section 57-38-38.
2. If there is a change in taxable income or income tax liability by an amount which is in excess of twenty-five percent of the amount of taxable income or income tax liability stated in the return as filed, a person may file a claim for credit or refund of any tax imposed by this chapter within six years after the due date of the return or within six years after the return was filed, whichever period expires last. The provisions of this subsection do not create or increase any net operating loss otherwise recognized under this chapter for purposes of carryover to any subsequent taxable period or carryback to any prior taxable period.
3. A corporation may file a claim for credit or refund arising from an overpayment of tax resulting from the carryback of a net operating loss carryback under subsection 3 of section 57-38-01.3, or resulting from a federal capital loss carryback, can be filed up to within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss



was incurred. The provisions of this subsection are effective for all carrybacks filed for taxable loss years beginning on or after December 31, 1986.

- 3- 4. A person other than a corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a federal net operating loss within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection are effective for loss years beginning after December 31, 1986.
5. Notwithstanding any other provision in this section, if any taxpayer, with or without intent to evade any tax imposed by this chapter, fails to file a state income tax return within three years after the due date of the return prescribed in this chapter, no credit or refund of overwithheld income tax or overpaid estimated income tax may be made.
6. If any person consents to an extension of time for the assessment of state income tax, under subsection 8 of section 57-38-38, the period of time for filing a claim for credit or refund will be similarly extended. Provided, however, if an assessment is issued, the taxpayer has sixty days from the assessment to file a claim for refund. If a claim for refund is filed in any year extended by an agreement under subsection 8 of section 57-38-38, the tax commissioner may assess additional tax for any year extended by the same agreement which has otherwise expired. The additional assessment is limited to issues raised in the claim for refund.
7. a. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, does so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner, even though other time periods prescribed in this section may have expired; provided the person submits a notice or other pertinent documentation as proof of the final determination of the changes or corrections by the United States internal revenue service, or other competent authority.

b. If a person required to file an amended state income tax return, or other information as required by the tax commissioner, under section 3 of this Act, does not do so within the ninety-day period prescribed therein, an overpayment of state income tax attributable to the changes or corrections made by the United States internal revenue service, or other competent authority, must be credited or refunded to the person by the tax commissioner if the person files the amended state income tax return, or other information as required by the tax commissioner, within two years after the final determination of the changes or corrections made by the United States internal revenue service, or other competent authority, even though other time periods prescribed in this section may have expired. This provision does not limit or restrict any other time period

prescribed in this section that has not expired as of the end of the two-year period prescribed in this subsection. Any interest otherwise allowed by section 57-38-35.2 does not accrue after the ninety-day period prescribed in section 3 of this Act, if this subdivision applies.

8. a. If a return is filed by an individual or an individual and spouse and, after the death of the individual, a refund claim is filed or becomes payable, the tax commissioner shall approve the refund for payment to the legal representative of the decedent upon application and presentation of certified copies of letters testamentary or letters of administration establishing the fiduciary relationship of the legal representative.
- b. If the legal representative of the taxpayer has not made application for the refund of the deceased taxpayer within one year from the date of the taxpayer's death, the tax commissioner may approve the refund to any person within the classifications set out herein and with the following priority: surviving spouse, children, grandchildren, parents, grandparents, and other relatives; upon proper application establishing the relationship of the claimant. Should an application be received from more than one individual in any of the classifications set out herein, the tax commissioner shall honor the earliest postmarked application which is properly filed pursuant to rules and regulations promulgated by him.
- c. When the tax commissioner acting in good faith has approved a refund payment pursuant to the provisions of this subsection, the tax commissioner shall not be held responsible to any person or legal representative of the decedent who may have qualified to make a proper application but has failed to do so within one year from the date of death of the deceased taxpayer.
- ~~4-~~ 9. Every claim for credit or refund shall be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
- ~~5-~~ 10. If the tax commissioner disallows a claim for credit or refund, in part or in full, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner denying a claim for credit or refund is final and irrevocable thirty days after the date the notice is mailed to the taxpayer unless, within this thirty-day period, the taxpayer has filed a ~~written~~ protest with the tax commissioner.
- ~~6-~~ 11. The protest shall set forth the grounds on which the protest is based, along with such any other information as may be required by the tax commissioner. If the taxpayer has so requested, the tax commissioner may grant the taxpayer or ~~his~~ the authorized representative of the taxpayer an informal conference.

- 7- 12. The tax commissioner shall reconsider the denial of the claim for credit or refund after the filing of a protest. The reconsideration may include the further examination by the tax commissioner or his the authorized representative of the tax commissioner of a taxpayer's books, papers, records, or memoranda, including corporate minutes and committee notes.
- 8- 13. Within a reasonable period of time after protest the tax commissioner shall notify the taxpayer of his the tax commissioner's reconsideration of claim for credit or refund. If the decision of the tax commissioner is a denial, the decision is final and irrevocable unless the taxpayer within fifteen thirty days following the date of the tax commissioner's decision seeks formal administrative review of the tax commissioner's reconsideration of claim for credit or refund by filing a complaint and requesting an administrative hearing. The complaint must be personally served on the tax commissioner or sent by certified mail. The provisions of chapter 28-32 shall apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner. Upon written request of a taxpayer, the tax commissioner may grant a reasonable extension of time for the filing of a complaint.
- 9- 14. If the tax commissioner determines that an amount in excess of the correct amount of tax, interest, or penalty due from any person has been paid by or on behalf of such that person because of income tax withheld or declaration of estimated tax paid, the tax commissioner may approve a refund of the excess amount which shall be paid to that person in the manner provided for payment of other claims against the state, except that it shall not be necessary to first file a claim for refund if the amount to be refunded was paid with respect to a return or report filed by such that person with the tax commissioner in the form prescribed therefor.

SECTION 7. AMENDMENT. Section 57-39.2-15 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15. Failure to file return - Incorrect return. If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the tax commissioner shall determine the amount of tax due from such any information as he the commissioner may be able to obtain, and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by him, his the person, the person's stock on hand, and other factors. The commissioner shall give notice of such the determination to the person liable for the tax. If the determination of tax due relates to an incorrect or insufficient return filed by a taxpayer, notice of such the determination shall be given not later than three years after the last day on which the return was due or three years after the return was filed, whichever period expires later; if it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return, notice of determination of tax due shall be given not later than six years after the last day on which the return was due or six years after the return was filed, whichever is later. Notice of determination of tax due for any reporting period for which a taxpayer failed to file a return shall be given not later than six years after the due date of the return; where fraudulent information is given in a return or where the failure to file a return is due to the fraudulent intent

or willful attempt of the taxpayer in any manner to evade the tax, the time limitation herein provided for giving notice of the determination of tax due shall not apply. Such The determination of tax due shall fix the tax finally and irrevocably unless the person against whom it is assessed, within fifteen thirty days after the giving of notice of such the determination, shall apply to the commissioner pursuant to chapter 28-32 for a hearing or unless the commissioner of his own motion shall reduce the same. At such hearing evidence may be offered to support such determination or to prove that it is incorrect. After such hearing the commissioner shall give notice of his decision to the person liable for the tax pursuant to the provisions of protest the determination under rules adopted by the commissioner and under chapter 28-32.

SECTION 8. AMENDMENT. Section 57-39.2-15.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.1. Extensions of time to perform sales tax audits.

1. Before the expiration of time prescribed in section 57-39.2-15 for the assessment of tax, the commissioner and the taxpayer may agree in writing to an extension of time for the assessment of the tax. The tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. No extension may be for more than one year from the date of the extension agreement.
2. If a taxpayer agrees to an extension of time for assessment of tax, the period of time for refund claims will be similarly extended.

SECTION 9. AMENDMENT. Section 57-39.2-25 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-25. Payment of refund.

1. Wherever by any provisions of this chapter a refund is authorized, the commissioner shall certify the amount of the refund, the reason therefor, and the name of the payee to the office of management and budget, who shall thereupon draw a warrant on the general fund in the amount specified payable to the named payee. Interest of ~~seven~~ ten percent per annum shall be allowed and paid upon any overpayment of tax from sixty days after the due date of the return or after the date such the return was filed or after the date the tax due was fully paid, whichever comes later, to the date of the refund.
2. If the tax commissioner disallows a claim for credit or refund, the tax commissioner shall notify the taxpayer accordingly. The decision of the tax commissioner to deny a claim is final and irrevocable thirty-days after the date of notice unless within the thirty-day period the taxpayer files a written protest. A written protest must be filed under rules adopted by the tax commissioner under chapter 28-32.

SECTION 10. AMENDMENT. Section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

57-51-09. Commissioner shall compute tax on incorrect returns.

1. The commissioner shall have the power and authority to ascertain and determine whether or not any return herein required to be filed with him the commissioner is a true and correct return of the gross products, and of the value thereof, of such that person; and if any person has made an untrue or incorrect return of the gross production or value thereof, as hereinbefore required, or shall have failed or refused to make such a return, the commissioner shall under rules and regulations prescribed by him the commissioner, ascertain the correct amount of either, and compute said the tax.
2. For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the return or six years after the return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the time to assess is three years. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.
3. Any person who consents to an extension of time for assessment of tax shall be presumed to have consented to a similar extension for refund.

SECTION 11. AMENDMENT. Section 57-51-19 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51-19. Refund of overpayments, duplicate payments, and erroneous payments Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the state auditor, the state auditor shall issue a warrant for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest at the rate of ten percent per annum must be paid on refunds of overpayments, duplicate payments, and erroneous payments.

A taxpayer may file a claim for credit or refund of an overpayment of tax. For taxable periods beginning before January 1, 1991, the claim must be filed within six years of the due date of the return or six years after the return was filed. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim within five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning after December 31, 1994, the taxpayer must file the claim within three years. However, if there is a change in tax liability on any return by

an amount in excess of twenty-five percent of the amount of tax liability reported on a return, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.

SECTION 12. EFFECTIVE DATE. Sections 3, 4, 5 and 6 of this Act are effective for taxable years beginning after December 31, 1990.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 649

SENATE BILL NO. 2211  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### TAX EXEMPTIONS, CREDITS, AND ASSESSMENTS

AN ACT to amend and reenact sections 57-02-08.1, 57-02-08.4, 57-02-08.5, 57-02-11, and 57-61-10 of the North Dakota Century Code, relating to the property tax credits for persons sixty-five years of age or older with limited income, to the conditional property tax exemption for owners of wetlands and the wetlands tax exemption payment, to the assessment of property that has been damaged, and to money collected and paid to the coal development fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on the homestead as defined in section 47-18-01, except that this exemption applies to any person who otherwise qualifies under the provisions of this subsection regardless of whether the person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled must be determined according to the following schedule:
  - a. If the person's income is not in excess of seven thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
  - b. If the person's income is in excess of seven thousand dollars and not in excess of eight thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the

person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.

- c. If the person's income is in excess of eight thousand five hundred dollars and not in excess of ten thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.
- d. If the person's income is in excess of ten thousand dollars and not in excess of eleven thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of eleven thousand five hundred dollars and not in excess of thirteen thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case may a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection may not reduce the liability of any person for special assessments levied upon any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that the person's income, including that of any dependent, as determined in this chapter does not exceed thirteen thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars including the value of any assets divested within the last three years. **Any person eligible for the exemption provided in this subsection must also sign an affidavit stating that the person has not divested the property within the last three years.** The term "dependent" includes the spouse, if any, of the person claiming the exemption. The assessor shall attach the statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate upon at the end of the taxable year of the death of the applicant.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of thirteen thousand dollars or less per annum from all sources, including the income of any dependent person, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters is eligible for refund for that part of the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances



furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, must be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred thirty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. In no case may a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection must be made to the tax commissioner before the first day of June of each year by the person claiming the refund, but the tax commissioner may grant an extension of time to file an application for good cause. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case may this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation and is not making a payment in lieu of property taxes.

3. All forms necessary to effectuate this section must be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 may receive any property tax credit under this section.

\* SECTION 2. AMENDMENT. Section 57-02-08.4 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.4. Conditional property tax exemption for owners of wetlands. Wetlands qualifying under this section shall be exempt from taxation. To qualify for the tax exemption, the owner of wetlands must annually file with the county director of tax equalization, on a form prescribed by the state tax commissioner, a legal description of the wetlands for which an exemption is claimed and an agreement to not drain, fill, pump, concentrate water in a smaller and deeper excavation in the wetland basin or alter the physical nature of the wetland in any manner that reduces the wetland's ability to function as a natural system during the year for which the exemption is claimed. To qualify for the exemption the agreement must be filed by June thirtieth of the year for which the exemption is claimed. The exemption is not available for years prior to filing of the agreement or for any year

\* NOTE: Section 57-02-08.4 was also amended by section 96 of Senate Bill No. 2050, chapter 231.

in which the terms of the agreement are violated. The county director of tax equalization shall certify to the county auditor, for each landowner receiving the exemption, the landowner's name, the amount of tax which would have been due on the exempt acreage for the most recent past tax year, and that the landowner has filed the required agreement. The amount of the wetlands exemption must be reflected upon the property tax statement of each eligible taxpayer.

For purposes of this section, "wetlands" means all types 3, 4, and 5 wetlands, as determined by the commissioner of agriculture and the game and fish commissioner, in accordance with United States fish and wildlife service circular no. 39 (1971 edition), drainage of which would be feasible and practical.

When wetlands are drained or altered so the land no longer qualifies for the exemption provided by this section, the land is subject to additional taxes which would have been assessed if the property had not qualified for the exemption provided by this section. The taxes which would have been due on the land without the exemption for the ten years preceding the year in which the exemption is terminated shall be computed, and the property owner shall pay the difference between such amount and the taxes which were actually paid on the property in addition to taxes currently due. Absence of water on property qualifying for the exemption under this section, caused by drought conditions, shall not disqualify the property from the exemption under this section.

The wetlands tax exemption provided by this section does not grant the public any additional or greater right of access to the wetlands or diminish any right of ownership to the wetlands. The owner of property exempt under this section may use the property in any manner which does not violate the agreement filed with the county director of tax equalization.

No property shall be exempt under this section unless the tax commissioner has certified to the county auditor of each county ~~before August first~~ by December tenth of the taxable year that funds are available in the state treasury which may be used for payment in full of any state obligations under section 57-02-08.5.

SECTION 3. AMENDMENT. Section 57-02-08.5 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-08.5. Wetlands tax exemption payment - Certification. Prior to ~~March~~ November first of each year ~~beginning in 1988~~, the county auditor of each county shall certify to the state tax commissioner on forms prescribed by the commissioner the total amount of property tax which would have been due on property exempt under section 57-02-08.4 within the county and other information as may be prescribed by the commissioner. The county auditor shall forward to the commissioner copies of all agreements described in section 57-02-08.4 in effect in the county.

The commissioner shall audit the claims for exemption, make corrections as required, and certify to the state treasurer for payment to each county on or before June ~~30, 1988, and thirtieth of each year thereafter~~, the sum of property taxes due on property exempt under section 57-02-08.4 for the county in the preceding year.

The county treasurer upon receipt of the payment from the state treasurer shall apportion and distribute it to the county and local taxing districts on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and the state tax commissioner and supplemental payments by the state treasurer may be made after the date prescribed in this section to make corrections as may be necessary.

No certifications must be made and no apportionment or distribution of payments to political subdivisions may be made under this section unless property was exempt under section 57-02-08.4 in the preceding year.

SECTION 4. AMENDMENT. Section 57-02-11 of the North Dakota Century Code is amended and reenacted as follows:

57-02-11. Listing of property - Assessment thereof. Property shall be listed and assessed as follows:

1. All real property subject to taxation shall be listed and assessed every year with reference to its value, on February first of that year.
2. Whenever after the first day of February and before the first day of April in any year, it is made to appear to the assessor by the oath of the owner that any building, structure, or other improvement, or tangible personal property, which is listed for taxation for the current year has been destroyed or injured by fire, flood, or tornado, the assessor shall investigate the matter and deduct from the valuation of the property of the owner of such destroyed property an amount which in the assessor's judgment fairly represents such deduction as should be made. ~~No deduction shall be made on account of damages covered by insurance or damages amounting to less than one hundred dollars.~~

SECTION 5. AMENDMENT. Section 57-61-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-61-10. Coal development fund established. Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 shall be paid to the state treasurer ~~within fifteen days from the date not later than the third working day of the month following the month in which they are received~~ by the state tax commissioner and shall be credited to a special fund in the state treasury, to be known as the coal development fund. The moneys accumulated in such fund shall be allocated by the state treasurer as provided by law and as appropriated by the legislative assembly.

Approved April 17, 1991  
Filed April 18, 1991

## CHAPTER 650

HOUSE BILL NO. 1049  
(Legislative Council)  
(Interim Jobs Development Commission)

### STATE PROPERTY LEASE TAXATION

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to payment of a license fee in lieu of property taxes on leasehold interests and improvements on state-owned property when used for tourism or concession purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

License fee in lieu of property taxes on leases for tourism or concession purposes. Payment of the license fee as provided in this section by the lessee of any leasehold interest in state-owned property leased from the superintendent of the state historical board or the director of state parks and recreation is a payment in lieu of all ad valorem taxes on the leasehold interest or any associated building or other improvement if the lessee uses the property, building, or other improvement primarily for tourism or concession purposes. The superintendent or the director shall establish the license fee at an annual amount not less than one dollar and not more than one percent of the gross receipts from the tourism or concession enterprise. The lessee shall pay the license fee to the treasurer of the county in which the tourism or concession enterprise is located and all fees received under this section must be deposited in the county general fund. The lease must indicate that the superintendent or the director approves use of the property primarily for tourism or concession purposes and intends the license fee paid by the lessee to be in lieu of ad valorem taxes.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved March 20, 1991  
Filed March 21, 1991

## CHAPTER 651

SENATE BILL NO. 2400  
(Thane)

### **RAILROAD ASSESSMENT CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 57-05 of the North Dakota Century Code, relating to confidentiality of certain information provided for the purpose of assessment of railroad property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-05 of the North Dakota Century Code is created and enacted as follows:

Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge or to make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars set forth or disclosed in any report, or to permit any report or copy or any book containing any abstract of particulars to be seen or examined by any person except as provided by law. Notwithstanding the provisions of this section, hearings held by the state board of equalization under chapter 57-05 or 57-13 must be open to the public under section 44-04-19. The commissioner may authorize examination of such reports by other state officers, and may furnish to the tax officials of another state, the multistate tax commission, or the United States any information contained in the reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect to an audit, provided that that information be furnished solely for tax purposes. The multistate tax commission may make that information available to the tax officials of any other state and the United States for tax purposes.

Approved March 26, 1991  
Filed March 26, 1991

## CHAPTER 652

SENATE BILL NO. 2249  
(Senators Streibel, Naaden, DeKrey)  
(Representatives Brown, Rennerfeldt, Whalen)

### CARBON DIOXIDE PIPELINES

AN ACT to create and enact two new sections to chapter 57-06 of the North Dakota Century Code, relating to a property tax exemption for certain centrally assessed pipeline and associated property used to promote enhanced recovery of oil or natural gas and to provide for payments in lieu of taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Carbon dioxide pipeline exemption. Property, not including land, is exempt from taxation for the first ten full taxable years after commencement of construction if it consists of a pipeline and necessary associated equipment for the transportation or storage of carbon dioxide to an oilfield in this state for use in enhanced recovery of oil or natural gas.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

Payments in lieu of taxes. Carbon dioxide pipeline property described in section 1 of this Act is subject to payments in lieu of property taxes during the time it is exempt from taxation under section 1 of this Act. For the purpose of these payments, carbon dioxide pipeline property described in section 1 of this Act must be valued annually by the state board of equalization in the manner that other pipeline valuations are certified. The county auditor shall calculate taxes on the carbon dioxide pipeline property described in section 1 of this Act in the same manner that taxes are calculated on other pipeline property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against carbon dioxide pipeline property, exempted under section 1 of this Act, to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline property is located.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 653

HOUSE BILL NO. 1027  
(Legislative Council)  
(Advisory Commission on Intergovernmental Relations)

### OPTIONAL TAX LEVY INCREASES

AN ACT providing optional property tax levy increase authority of political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section, "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most four percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:
  - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.
  - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
  - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
  - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
  - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1990, and is thereafter ineffective.

Approved April 3, 1991  
Filed April 4, 1991



## CHAPTER 654

SENATE BILL NO. 2377  
(Senator O. Hanson)  
(Representatives Gorder, Brokaw)

### LONG-DISTANCE LEARNING TECHNOLOGY LEVY

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to a levy for long-distance learning technology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Long-distance learning technology levy - Voter approval.

1. The school board of a public school district may, upon approval by a majority vote of the electors of the school district at any regular or special election, dedicate a tax levy for purposes of this section not to exceed five mills on the dollar of taxable valuation of property within the district.
2. All revenue accruing from the levy under this section must be used only for purposes of establishing and maintaining long-distance learning.
3. If the need for the fund terminates, the governing board of the public school district shall order the termination of the levy and shall transfer the remaining balance to the general fund of the school district.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 655

SENATE BILL NO. 2272  
(Senators Robinson, Thane, Yockim)  
(Representatives Byerly, Kolbo, Myrdal)

### SENIOR CITIZEN SERVICES FUNDING

AN ACT to amend and reenact section 57-15-56 of the North Dakota Century Code, relating to state matching funds for services and programs for senior citizens; and to provide an appropriation from the state aid distribution fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-56 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-56. Authorization of tax levy for services and programs and activities for senior citizens - Elections to authorize or remove the levy - State bonding fund coverage - State matching program for senior citizen services and programs and activities.

1. The board of county commissioners of any county is hereby authorized to levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city in the county is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining services and programs and activities for senior citizens including the expansion maintenance of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city in the county shall become void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in subsection 25 of section 57-15-06.7 or subsection 26 of section 57-15-10. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy shall be in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-58 or by the governing body of any city pursuant to section 40-05-16.
2. The levy authorized by this section may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation. Governing bodies may enter into contracts with county councils on aging or comparable representative groups in counties or cities that do not have a council on aging to determine jointly

and to administer distribution of funds in accordance with the contract and the provisions of this section. To receive any funds under this section, an organization or agency must file with the governing body from which funds are being requested a report of its program for the fiscal year for which the funds are requested. The report must show all financial resources available to the organization or agency and its program, how those resources are budgeted or intended to be used in that fiscal year or in the future, and the purposes for which funds being requested under this section are to be used. An organization or agency and its program which receives funds under the provisions of this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city to determine its eligibility to receive funds under the provisions of this section.

3. The levy authorized by this section shall be imposed or removed only by a vote of a majority of the qualified electors of the county or city directing the governing body to do so. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election is presented to said governing body.
4. The officers or employees of a nonprofit corporation under contract with the board of county commissioners or the governing body of the city, in regard to the manner in which the funds shall be expended and the services are to be provided, are authorized to receive, and shall be eligible for, bonding coverage through the state bonding fund.
5. The department of human services shall match provide matching funds for the amounts levied by counties and cities for senior citizen services and programs and activities operated pursuant to this section. The grants must be made on or before March first of each year and must be equal to the amount levied for the previous taxable year by each county or city within the limitations of legislative appropriations, provided that no such grant may be made to any county or city which has not filed with the department of human services a required written report verifying that grant funds received in the previous year under this subsection have been budgeted for the same purposes permitted for the expenditure of proceeds of a tax levied under this section. The written report must be received by the department of human services on or before February first of each year following a year in which the reporting county or city received grant funds under this subsection.

SECTION 2. APPROPRIATION. Notwithstanding the provisions of section 57-39.2-26.1, there is hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, the sum of \$900,000, or so much thereof as may be necessary, to the department of human services for the purpose of providing matching funds under section 57-15-56 for the biennium beginning July 1, 1991, and ending June 30, 1993.

Approved April 11, 1991  
Filed April 12, 1991

## CHAPTER 656

HOUSE BILL NO. 1608  
(Representatives Larson, Pyle)  
(Senator Lindgren)  
(Approved by the Committee on Delayed Bills)

### SCHOOL SPECIAL RESERVE FUNDS

AN ACT to amend and reenact section 2 of chapter 701 of the 1989 Session Laws of North Dakota, relating to an expiration date for withdrawals from school district special reserve funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2 of chapter 701 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, ~~1991~~ 1993, and after that date is ineffective.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 657

SENATE BILL NO. 2343  
(Senators Yockim, Robinson)  
(Representatives Schmidt, Nelson)

### COLLECTION OF RENTS FOR SPECIAL ASSESSMENTS

AN ACT to amend and reenact sections 57-21-01, 57-21-03, 57-21-04, 57-21-08, 57-21-09, 57-21-10, and 57-21-12 of the North Dakota Century Code, relating to collection of rents for payment of taxes and special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-21-01 of the North Dakota Century Code is amended and reenacted as follows:

57-21-01. Application to district court. At any time after any taxes or special assessments or any installment thereof, heretofore or hereafter levied and assessed upon any real property within this state, shall have been delinquent for more than twelve months, and shall remain due and unpaid, the county treasurer, if the said property produces rents, may petition, and, by direction of the board of county commissioners, shall petition, the district court, in the name of the county, for an order directed to the tenant or subtenant, if any, and to the owner of said property, directing that said rents be paid to the county treasurer.

SECTION 2. AMENDMENT. Section 57-21-03 of the North Dakota Century Code is amended and reenacted as follows:

57-21-03. Order of court. After hearing, the court may issue an order directing the tenant to pay to the county treasurer all rents payable under the terms of the lease of the property, either due or to become due, and also directing the county treasurer to apply the said payments of rent to the delinquent and current taxes and special assessments, including penalty and interest, and the costs and expenses of the proceeding as determined and taxed by the court. In such order, or thereafter, upon application and hearing, the court, in its discretion, may allow to the taxpayer a percentage of rents, property, and crops, as to the court may seem just, up to and including fifty percent thereof, and may order the treasurer to pay such percentage to such taxpayer at such times and under such circumstances as to the court may seem just and equitable.

SECTION 3. AMENDMENT. Section 57-21-04 of the North Dakota Century Code is amended and reenacted as follows:

57-21-04. Duty of tenant and owner. A tenant, pursuant to an order made as provided in section 57-21-03, shall pay to the county treasurer all of the rent for the property described in such order, and in cases where the owner reserves title to property as security for rent, the tenant or owner shall pay said taxes and special assessments out of the owner's portion of

such crops or other property, or the proceeds thereof, and a failure to comply with the provisions of the order of the court shall constitute contempt and shall be punishable as such.

SECTION 4. AMENDMENT. Section 57-21-08 of the North Dakota Century Code is amended and reenacted as follows:

57-21-08. Vacation of order requiring payment of rents for taxes and special assessment. Whenever the delinquent and current taxes and special assessments, including penalty and interest, and the costs and expenses of the proceeding, have been fully satisfied out of the rents, property, and crops as provided in this chapter, the treasurer shall apply to the court for an order vacating the order directing the payment of rents, which shall be served upon the tenant and upon the owner in the manner provided for the service of the original notice.

SECTION 5. AMENDMENT. Section 57-21-09 of the North Dakota Century Code is amended and reenacted as follows:

57-21-09. Tax and special assessment receipts. Whenever the payments of rents shall result in the payment of any year's taxes or special assessments, with penalties, interest, and costs thereto attached, the county treasurer shall issue his receipt for such year's tax or special assessment in the usual manner. In like manner, the county auditor shall issue a certificate of redemption for any taxes or special assessments which have been sold.

SECTION 6. AMENDMENT. Section 57-21-10 of the North Dakota Century Code is amended and reenacted as follows:

57-21-10. Payments under protest. Nothing in this chapter shall be construed to prevent any taxpayer from availing himself of the right provided by law as to the payment of taxes or special assessments under protest.

SECTION 7. AMENDMENT. Section 57-21-12 of the North Dakota Century Code is amended and reenacted as follows:

57-21-12. Remedy cumulative. The remedy provided in this chapter is in addition to any other remedy which may be provided by law for the collection of taxes or special assessments levied and assessed against real property.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 658

SENATE BILL NO. 2140  
(Committee on Finance and Taxation)  
(At the request of the Office of Management and Budget)

### OFFICE OF MANAGEMENT AND BUDGET FILINGS

AN ACT to amend and reenact section 57-23-08 of the North Dakota Century Code, relating to duties of county auditors after abatement actions; and to repeal section 54-27-03 of the North Dakota Century Code, relating to the requirement that county auditors furnish the office of management and budget with abstracts of tax lists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-23-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-23-08. Duties of county auditor and county commissioners after abatement action. After the granting of any application for abatement or refund or compromise of any tax, the county auditor shall correct all tax lists in accordance with the order of abatement or compromise, and the applicant is relieved of further liability for the tax abated or compromised. If the board of county commissioners disapproves any application for abatement or refund or compromise, in whole or in part, the reasons for disapproval must be stated thereon and the applicant may appeal the rejection of the application for abatement or refund or compromise as provided by law. ~~The county auditor, at the close of each calendar year, shall certify to the director of the state office of management and budget the amount of state taxes canceled by action of the board of county commissioners and the same must be credited to the county.~~

SECTION 2. REPEAL. Section 54-27-03 of the North Dakota Century Code is repealed.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 659

HOUSE BILL NO. 1427  
(Henegar, Ritter)

### PROCEEDINGS FOR UNREDEEMED TAX LANDS

AN ACT to amend and reenact sections 57-27-01, 57-27-02, 57-27-03, 57-27-04, 57-27-05, 57-27-07, 57-27-10, 57-28-01, 57-28-02, 57-28-03, 57-28-04, 57-28-05, 57-28-06, 57-28-08, 57-28-09, 57-28-10, 57-28-11, 57-28-12, 57-28-13, 57-28-14, 57-28-15, 57-28-17, 57-28-17.1, 57-28-18, 57-28-19, 57-28-19.1, 57-28-20, 57-28-21, 57-28-22, 57-28-23, 57-28-24, 57-28-25, 57-28-26, and 57-28-27 of the North Dakota Century Code, relating to rights and procedures when property is not redeemed from tax sale.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-27-01 of the North Dakota Century Code is amended and reenacted as follows:

57-27-01. Rights of purchaser when lands not redeemed. Any owner of a original or subsequent unredeemed tax sale certificate, original or subsequent, shall be who has complied with the provisions of this chapter is entitled, if there is no redemption, to receive a tax deed for the property and the possession, rents, and profits of the land property involved, at the expiration of the period of redemption, and if on demand of such owner the. If a party in possession refuses or neglects to does not surrender possession, he may be proceeded against as one holding over after the determination of his estate, the holder of the tax deed may proceed to remove the party by an action of eviction, but all rights of the owner of such.

A tax sale certificate shall cease and shall be deemed forfeited and extinguished, and the auditor of the county wherein such premises are situated must cancel such lien from his becomes void and must be canceled from the records of the county auditor, unless the owner of such the tax sale certificate shall present the same presents it to the county auditor and request requests the giving of notice of the expiration of the period of redemption within ten years from and after the date of the tax sale to which such the certificate relates.

\* SECTION 2. AMENDMENT. Section 57-27-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-27-02. Notice of expiration of period of redemption - Contents and service of notice. The procedure upon presentation of a tax sale certificate shall be as follows:

1. Every person holding a tax sale certificate, at any time after the expiration of After three years and before ten years from the date of the tax sale to which such a tax sale certificate relates, and before ten years from such date have expired, the holder of the tax sales certificate may present the certificate it to the county

\* NOTE: Section 57-27-02 was also amended by section 3 of Senate Bill No. 2345, chapter 661.



auditor, who thereupon shall prepare under his hand and seal, a notice for service of notice of expiration of the period of redemption. The notice must be directed to the person in whose name the lands property described in the certificate are is assessed, to all lienholders of record, and to all mortgagees or assignees of mortgages holding unsatisfied recorded mortgages, specifying in such notice the description of such lands, the amount for which the same were sold, the amount required to redeem the same from sale, inclusive of delinquent installments of special assessments, exclusive of the costs to accrue on such notice, and the time when the redemption period will expire. The notice must include:

- a. The description of the property.
  - b. The amount for which the property was sold at tax sale.
  - c. The amount of delinquent property taxes, with penalties and interest, for each year.
  - d. The amount of delinquent special assessments, with penalties and interest, for each year.
  - e. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue.
  - f. The time when the redemption period will expire.
2. A If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of expiration of the period of redemption shall be delivered to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state, but if. If the owner is a nonresident of this state, the sheriff shall serve the notice shall be served by registered or certified mail addressed to the owner at his the owner's last known post-office address and by determine whether personal service upon any person is required under subsection 4. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by registered mail addressed to the owner at the owner's last known post-office address. If service is made by registered mail under this subsection, service must also be made by publication once in each week for three consecutive weeks in some the official county newspaper printed and published in the county where the lands to which the notice relates are located; and if no newspaper is published therein, then in some newspaper printed and published at the capital of the state.
3. Within ten days after a request by the county auditor, the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property, upon whom the notice of the expiration of the period of redemption must be served.

4. The notice shall must be served personally upon any person actually residing upon the property covered by a tax sale certificate and upon any tenant or other person entitled to the possession of said the property as may appear from the records of the register of deeds.
- ~~4-~~ 5. The county auditor shall serve the notice of the expiration of the period of redemption upon each mortgagee, lienholder, and other person interested therein as may appear from with an interest in the property, and upon whom personal service is not required by this section, as shown by the records of the register of deeds and or the clerk of the district court of the county. The notice must be served by registered mail and a registry and return receipt must be demanded and filed with proof of service.
6. The expense of service by registered mail shall of the notice under this section must be added to the amount required to redeem and must be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all parties upon whom the notice was served with the date of mailing in each case, and the auditor shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of the expiration of the period of redemption. Within ten days after a request by the county auditor the register of deeds and the clerk of the district court shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the real estate, upon whom the notice of the expiration of the period of redemption must be served. Service by publication under this section must be shown of record by filing of an affidavit of publication.

SECTION 3. AMENDMENT. Section 57-27-03 of the North Dakota Century Code is amended and reenacted as follows:

57-27-03. Proof of service of notice - Fees - County not liable for expense. Proof of service of the notice of the expiration of the period of redemption must be filed in the office of the county auditor, and no deed shall issue may be issued until such proof it has been filed. The fees for serving, and the printer's fee for publishing, such notice shall costs of service and publication of the notice must be added to the amount required to redeem the land to which the notice relates, and shall property and must be paid by the party offering to redeem the same before any making the redemption can be effected. The county shall is not be liable for any expense incurred under the provisions of this chapter, and whenever. When a tax sale certificate is presented to, the county auditor, he shall estimate the fees costs for serving and publishing the notice of expiration and the cost of publication thereof and shall require the holder of such the tax sale certificate to deposit that amount with the auditor the amount of such estimated fees and costs, and if such. If the amount afterwards is later found to be excessive or the property is redeemed, the excess shall must be refunded to the holder of the certificate.

SECTION 4. AMENDMENT. Section 57-27-04 of the North Dakota Century Code is amended and reenacted as follows:

57-27-04. Redemption period after notice - Interest. The time for redemption of lands from tax sale ~~shall expire~~ expires ninety days after the completed service of the notice of expiration of the period of redemption. The tax sale certificate and any subsequent tax sale certificates ~~shall~~ continue to draw interest until the certificates are redeemed or the taxes are paid.

SECTION 5. AMENDMENT. Section 57-27-05 of the North Dakota Century Code is amended and reenacted as follows:

57-27-05. Tax deed to be issued. ~~At~~ If no redemption has been made at the expiration of the period of redemption, and ~~after the filing of the proof of service of the notice of expiration of such the period, the county auditor, if no redemption has been made, on surrender of redemption has been filed, the owner of the certificate of tax sale to him, shall surrender the certificate to the county auditor. The county auditor shall execute to the owner of the certificate, his heirs and assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the said property, giving the certificate owner, his heirs and assigns, an absolute estate in fee simple in such lands, the property. The ownership acquired by the certificate owner is subject to the claims of the state or other taxing districts on account of taxes or other liens or encumbrances, including installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption. Such deed shall be executed by the county auditor under his hand and seal. Such The deed shall be issued under this section is prima facie evidence of the truth and regularity of all facts therein recited and of the regularity of all the and proceedings from the assessment and valuation of the land by the assessor up to before the execution of the deed.~~

SECTION 6. AMENDMENT. Section 57-27-07 of the North Dakota Century Code is amended and reenacted as follows:

57-27-07. Assignment of certificate for land bid in by county. At any time after any ~~piece or parcel of land shall have~~ property has been bid in for the county, and ~~before it shall become forfeited to the county, and while it shall remain unredeemed, and not subject to a tax deed to the county, the county auditor may assign and convey the same and all of the rights of the county in such piece or parcel of land the property to any person, other than the county auditor, county treasurer, or any their deputy or clerk of either such officer, who. The assignee shall pay the amount that was bid for which the same shall have been bid in; together with property, interest thereon from the date of the tax sale at the rate of six percent per annum, and the amount of all subsequent any later delinquent taxes, if any, and. The county auditor shall execute to him an assignment, for each certificate, which may be in substantially the following form:~~

I, -----, auditor of the county of -----, state of North Dakota, hereby do certify that at the sale of real estate for the delinquent taxes thereon for the county of ----- and state aforesaid, which sale was held at the ----- in said county of ----- on the ----- day of -----, A.D. 19--, for the taxes of the year -----, the following described piece or parcel of land situated in said county of -----, state of North Dakota, to wit: (insert description) was offered for sale to the best bidder, and no one bidding upon such offer, the same then was bid in for the county

for the sum of ----- and the same still remaining unredeemed, and -----, on this day, having paid into the treasury of said county, the amount for which the same was bid in with interest thereon, and all subsequent delinquent taxes, amounting in all to ----- dollars, therefore, in consideration thereof, and pursuant to law, I hereby do assign and convey all the right, title, and interest of said county to said piece or parcel of land acquired therein at said sale to the said -----, his heirs and assigns, subject to redemption as provided by law.

And I further certify that unless redemption of said real estate is made in the manner provided by law, the said ----- or his assigns, will be entitled to a deed therefor on and after the expiration of the time for redemption, as provided by law, and upon the surrender of this certificate.

In witness whereof I hereunto have set my hand and seal this ----- day of -----, 19--.

County Auditor of -----  
County, North Dakota.

SECTION 7. AMENDMENT. Section 57-27-10 of the North Dakota Century Code is amended and reenacted as follows:

57-27-10. County auditor to acknowledge tax deeds. All such tax deeds shall must be acknowledged by the county auditor before someone authorized by law to take acknowledgments of deeds. For said the deed, the county auditor shall be entitled to may charge a fee of fifty cents to be paid by the grantee in such deed.

SECTION 8. AMENDMENT. Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

57-28-01. Notice of expiration of period of redemption to be given. On or before June first in each year, the county auditor shall give notice of the expiration of the period of redemption as to all tracts of real estate sold to the county; where for all property for which three or more years have expired from the date of the original, or any subsequent, passed since tax sale certificates were issued or deemed to have been issued to the county, which have not been redeemed or assigned.

SECTION 9. AMENDMENT. Section 57-28-02 of the North Dakota Century Code is amended and reenacted as follows:

57-28-02. When redemption period expires. The period of redemption shall expire for property bid in by the county expires on October first after the service of the notice of the expiration of the period of redemption prescribed by this chapter.

SECTION 10. AMENDMENT. Section 57-28-03 of the North Dakota Century Code is amended and reenacted as follows:

57-28-03. Amount of delinquent taxes to be included in Contents of notice of expiration of period of redemption. The county auditor shall include in the notice Notice of the expiration of the period of redemption all real estate taxes, including delinquent installments of special assessments; where three or more years have expired from the date of the

original, or any subsequent, tax sale certificate, issued or deemed to have been issued at the time of the service of such notice, but such notice shall show separately the amount of delinquent taxes and delinquent installments of special assessments, with penalties and interest, due for each year, and the total amount which is required to be paid to effect a redemption of the real estate from such tax deed proceedings must include:

1. The description of the property.
2. The amount for which the property was sold at tax sale.
3. The amount of delinquent property taxes, with penalties and interest, for each year.
4. The amount of delinquent special assessments, with penalties and interest, for each year.
5. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue.
6. The time when the redemption period will expire.

SECTION 11. AMENDMENT. Section 57-28-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-04. Service of notice of the expiration of the period of redemption. The county auditor shall serve the notice of the expiration of the period of redemption upon the owner of the record title of the real estate for property sold to the county for taxes, and upon each mortgagee, lienholder, and other interested person as may appear from the records of the register of deeds and the clerk of the district court of the county. Except for property upon which there is a homestead, the notice must be served by certified mail, and a return receipt must be demanded and filed with proof of service. For property upon which there is a homestead, the notice must be served as provided in subsection 2 of section 57-27-02. The expense of the service must be added to the amount required to redeem, and must be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor shall make proof of service by affidavit showing the names and addresses of all parties upon whom the notice was served, with the date of mailing in each case, and must attach the registry, certification, and return receipts, and must file the affidavit and receipts with the original notice of the expiration of the period of redemption. The register of deeds and the clerk of the district court, upon request by the county auditor, and within ten days thereafter, shall furnish the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the real estate, upon whom the notice of the expiration of the period of redemption must be served in the manner prescribed in subsections 2 through 6 of section 57-27-02.

SECTION 12. AMENDMENT. Section 57-28-05 of the North Dakota Century Code is amended and reenacted as follows:

57-28-05. Form of notice for service by registered mail. The notice of the expiration of the period of redemption which the county auditor is required to serve by registered or certified mail shall must be substantially in the following form:

## NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION

To -----, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in said real estate:

I, -----, county auditor of ----- County, North Dakota, hereby give notice that the real estate hereinafter described, at the annual tax sale held in the county on the ----- of December, 19--, was offered for sale for delinquent taxes against it for the year ----- and was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice.

Said property is described as follows, with the amount required to redeem set out opposite each description, to wit: -----

Given pursuant to authority of law this ----- day of -----, 19--.

County auditor of ----- County, North Dakota.

\* SECTION 13. AMENDMENT. Section 57-28-06 of the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor, ~~on or before August first of each year,~~ shall serve notice of the expiration of the period of redemption by publication as to all ~~tracts of real estate upon property sold to the county for taxes for which such notice is served upon the owner~~ by registered ~~or certified~~ mail. ~~Such~~ The notice may include any number of parcels of ~~real estate, property~~ and only one heading ~~shall be is~~ necessary for the entire list. ~~The auditor shall include in the amounts stated in such notice must include a statement of the cost of publication of the notice. Such~~ The notice ~~shall must~~ be published once ~~on or~~ before August first in the official newspaper of the county ~~wherein such real estate is situated.~~

SECTION 14. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 57-28-06 was also amended by section 4 of Senate Bill No. 2345, chapter 661.

57-28-08. Effect of failure to redeem. The failure of the owner or, any mortgagee, or other lienholder, to redeem such lands property bid in by the county before the period of redemption expires, shall operate operates:

1. To pass all of the right, title, and any interest of the owner, mortgagee, or lienholder in and to said premises; the property to the county by operation of law. The interest acquired by the county is subject only to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption.
2. To foreclose all rights and equities of redemption.
3. To waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, in tax deed proceedings; except jurisdictional defects.

SECTION 15. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the expiration of the period of redemption for property that was sold to the county for taxes, and which has not been assigned or redeemed, the county auditor shall issue a tax deed to the county, in the usual form; for all real estate which was not redeemed within the period of redemption. Such. The tax deed shall pass passes the absolute property in fee to the county, free from all encumbrances whatsoever; except installments of special assessments certified or to be certified to the county auditor or what which may become due subsequent to the time of after the service of the notice of expiration of the period of redemption; provided; that so long as. While the county holds title under a tax deed to such property, it shall is not be liable for the payment of any such installments of special assessments which may become due unless the board of county commissioners has leased or contracted to sell such the property. Such deeds shall be A deed issued under this section is prima facie evidence of the truth and regularity of all the facts therein recited and of the regularity of all the and proceedings from the assessment and valuation of the land by the assessor up to before the execution of the deed.

SECTION 16. AMENDMENT. Section 57-28-10 of the North Dakota Century Code is amended and reenacted as follows:

57-28-10. Appraisal for annual sale - Minimum sale price. All real estate property acquired by the county by tax deed shall must be appraised by the board of county commissioners at least thirty days prior to before the annual sale provided by under this chapter. The appraised price shall must be sufficient to cover all general taxes, installments of special assessments, hail indemnity taxes; penalties, interest, and costs, which were extended and due against the property at the time of the service of the notice of expiration of the period of redemption, plus an amount equal to the estimated taxes and special assessments for the current assessment year. If the fair market value of the property is more than the total amount due against the property, the minimum sale price of the property must be at least equal to the total amount due against the property. If the fair market value of such the property is less than such the total amount due against the property, the board shall fix a fair and just minimum sale price for such the property.

SECTION 17. AMENDMENT. Section 57-28-11 of the North Dakota Century Code is amended and reenacted as follows:

57-28-11. Hearing on appraisal. After making the appraisal of lands property acquired by tax deed, the board of county commissioners shall set a date for hearing objections to the minimum sale price so determined; and. At least ten days before the hearing, the county auditor, at least ten days previous to such hearing, shall mail to the auditor of any city, or the clerk of the board of supervisors of any township wherein such lands are, in which appraised property is located, a written notice in writing stating the time when objections to the established minimum sale price so fixed will be heard. At such hearing, any Any member or representative of the governing body of any taxing district, or any representative thereof, shall be heard may appear at the hearing with reference to the fair market value of such lands appraised property, and the board thereupon shall may make such appropriate changes in the minimum sale price of such property as it shall deem fair and just. In fixing values, the board of county commissioners may classify all lands, except city lots, according to their suitability for farming, grazing, forage, or irrigational purposes, conforming as nearly as practicable to the classification of such lands adopted by the county, state, and federal agencies in connection with the land use program, and such classification shall be considered in determining the value thereof.

SECTION 18. AMENDMENT. Section 57-28-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-12. Appeal. The governing body of any taxing district, if If dissatisfied with the determination of the board of county commissioners, under section 57-28-11, the governing body of any taxing district may appeal to the district court in accordance with the procedure provided in under section 28-34-01. All determinations of minimum values, on appeal, Appeals under this section must be heard by the court without a jury. The county auditor shall make such any changes, if any, as may be in minimum sale price ordered by the court upon appeal and shall offer such lands for sale at the minimum sale price, determined by the final judgment of the court.

SECTION 19. AMENDMENT. Section 57-28-13 of the North Dakota Century Code is amended and reenacted as follows:

57-28-13. Time and place of annual sale. The annual sale of land acquired by tax deed shall must be held at the county auditor's office or the usual place of holding district court in each the county, beginning on the third Tuesday of November of each year, and shall continue from day to day until completed.

\* SECTION 20. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale shall must include a description of all real estate and minimum sale price for each parcel of property to be sold, with the minimum sale price thereof, and shall. Notice must be given in both of the following manners:

1. By posting a notice at the front door of the courthouse at least fifteen days prior to before the date of sale; and.

\* NOTE: Section 57-28-14 was also amended by section 6 of Senate Bill No. 2345, chapter 661.



2. By publishing a notice in the official newspaper of the county once, not less than ten days ~~prior to~~ before the date of sale.

SECTION 21. AMENDMENT. Section 57-28-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-15. Annual sale at auction - Sale price - Terms of payment. The annual sale ~~shall~~ must be conducted in the following manner:

1. Each parcel of land ~~shall~~ must be sold at auction to the highest bidder ~~therefor, but not for a sum no less than the minimum sale price as fixed prior to before the sale, and such.~~ The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in such equal annual installments as the purchaser and auditor may agree upon; not to exceed over a period of not more than ten years; and the. The purchaser shall have the right to may pay any or all annual installments with interest at any time prior to the maturity thereof before the agreed due date of the installments.
2. If the sale is for cash, the purchaser ~~forthwith~~ shall promptly pay the amount bid to the county treasurer.
3. If the ~~sale is for part cash and the balance purchase price is to be paid in equal~~ installments, the purchaser shall pay the amount of the first installment to the county treasurer, and shall be given a contract for deed setting forth the terms of the sale, which shall. The contract for deed must be executed by the purchaser and, the chairman of the board of county commissioners, and the county auditor. Such The contract shall must be in such a form as prescribed by the state tax commissioner may prescribe, and shall. The contract must give the county the right, upon any default of the purchaser, to cancel the contract by resolution and due notice to upon default by the purchaser.
4. The original contract ~~shall~~ for deed must be filed with the county treasurer, who shall endorse thereon record upon it all payments made by the purchaser, and the unpaid balance shall draw interest at the rate established by the board of county commissioners. The interest rate for the contract must be established by the board of county commissioners may not exceed at no more than twelve percent.
5. Upon ~~the payment of the purchase price in cash, or the payment in full of all installments, with interest to the date of payment completion of a cash sale or payments under a contract for deed,~~ the county auditor shall execute and deliver to the purchaser a deed conveying to him all right, title, and the purchaser the entire interest of the county in and to such the property.
6. Upon the execution and delivery of ~~such the deed or contract for deed or such deed, as the case may be, the real estate described therein shall be subject to taxation and shall be placed upon the assessment roll for taxation in the same manner as other private property,~~ the property becomes taxable to the purchaser.

SECTION 22. AMENDMENT. Section 57-28-17 of the North Dakota Century Code is amended and reenacted as follows:

57-28-17. Sale between annual sales. All parcels of real estate Any property not sold at the annual November sale may be sold by the county auditor at private sale at any time before the next annual November sale, but no sale shall be made by the county auditor at a price for not less than the property's minimum sale price fixed prior to the November sale. Provided, however, that a. A parcel of real estate against which one or more unpaid installments of any special assessment continue continues as a lien pursuant to under section 57-28-09 may be sold by the county auditor free of any part or all of such the lien if the governing body of the city in which the parcel property is located finds that the sum of the minimum sale price fixed by law for the parcel together with and the unpaid special assessment lien or liens against it exceed exceeds the market value of the parcel; in such a case property. If the governing body of the city is hereby authorized to makes this finding, it may cancel all or such part of any the special assessment lien against the parcel property to reduce the lien to an amount which, when added to the minimum sale price, will be equal to the market value of the parcel; the property. The action of the governing body shall be certified by the city auditor or clerk to the county auditor, after which the. The county auditor may then sell the parcel property at private sale at any time before the next annual November sale for not less than the minimum sale price fixed by law; the parcel shall pass to the resulting amount. The purchaser acquires the property free from any encumbrance for that part of any lien for special assessment that which was canceled by the governing body of the city, and the county auditor shall remove from the record those any canceled special assessments against the premises that have been so canceled.

Notwithstanding the provisions of this section or other provisions of law, any such parcel of real estate that property acquired by the county which is subject to a special assessment lien for improvements made by a city may be sold between annual sales by the county auditor for cash to the city at whatever price less than the minimum sales to that city for cash at any price that is agreed upon by the board of county commissioners and the governing body of the city.

SECTION 23. AMENDMENT. Section 57-28-17.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-17.1. Private sale between annual sales by nonexclusive listing agreements. The board of county commissioners may by resolution engage licensed real estate brokers to attempt to sell parcels of real estate property not sold at the annual November sale. The resolution must authorize sale by way of nonexclusive listing agreements; describe the real property to be sold; provide a maximum rate of fee, compensation, or commission; and provide that the county reserves the right to reject any and all offers determined to be insufficient. Real estate Property that is subject to a special assessment lien for improvements made by a city shall must first be offered for sale to the city.

SECTION 24. AMENDMENT. Section 57-28-18 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-18. Terms of private sale and redemption and distribution of proceeds. Any private sale of real property made between the annual November sales must be made upon the same terms and conditions as a sale is authorized to may be made at the November sale, except that when. The sale or redemption of farmland acquired by the county by tax deed is sold after the first of January such sale will be made subject to any existing farm lease of

said land the property for the year in which such of the sale is made, and if such property is sold at private sale to any person other than the former owner, his executor or administrator, or any member of his immediate family, such sale must be held in abeyance for a period of thirty days from the date of notice to the former owner, his executor or administrator, or any member of his immediate family, given by registered or certified mail by the county auditor, to his last known post-office address, or, if the post-office address is not known, then to the post office nearest the land, during which time the former owner, his executor or administrator, or any member of his immediate family, may make redemption by payment in full of the delinquent taxes, penalty, and interest charged against such real estate or the proposed sale price, whichever may be the lesser. If no redemption is made by the former owner, his executor or administrator, or any member of his immediate family, during said period of thirty days, then the sale is final and the purchaser is entitled to a deed as provided in this chapter. When farmlands are so redeemed after the first of January, such redemption will be made subject to any existing farm lease of said lands for the year in which such redemption is made or redemption. If the farmland is to be sold by private sale to any person other than the former owner or other interested person, a deed or contract for deed may not be delivered to the purchaser until thirty days after service by registered mail upon the former owner or other interested party of the pending sale, the date when the sale will become final, and the amount required to redeem the property. For the purposes of this section, "other interested party" means the executor, administrator, parent, spouse, or child of the former owner who has notified the county auditor in writing of that status, the address at which service may be made, and that the person should be notified of the expiration of the period of redemption in connection with any private sale of the property.

In case of the sale or, contract for sale, or redemption of tax deed land before the first of February, such land property during January, the property must be assessed and taxed for the current that year, and the purchaser or vendee or redemptioner is entitled to the rental and landlord's share of crops on such land the property for such the year. In case of the sale or, contract for purchase sale, or redemption of tax deed land after January thirty first, the land property must not be assessed and taxed for the current that year, and the county shall retain is entitled to the rental and landlord's share of the crops thereon on the property for that the year. The proceeds realized from such a sale between annual November sales must be apportioned in the same manner in which as the proceeds of the annual November sale are distributed. The proceeds realized from any rental and landlord's share of the crops must be apportioned in the manner in which other rental proceeds are distributed under the present law.

SECTION 25. AMENDMENT. Section 57-28-19 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19. Rights of former owner to repurchase. The former owner, the former owner's executor or administrator, or any member parent, spouse, or child of the immediate family, shall have the right to former owner may repurchase all real estate any property forfeited to the county under tax deed proceedings, so long as the tax title thereto to the property remains in the county. However, in the event If any city or town has theretofore made a special assessment for public improvements against any such tract, piece, or parcel of land, which the property and the special assessment has become delinquent and remains unpaid, such the city or town shall have has a right to purchase the property for cash, at the appraised value, prior to that of

the former owner. The county auditor of any county, immediately upon any party. Upon appraisal of such the property, the county auditor shall give notice thereof to the auditor of any such city or town and such the city or town shall have has thirty days within which to exercise its priority right to purchase said the property under this section. The purchase by a former owner A repurchase by a private party under this section may be for cash or upon contract for deed made by and between the board of county commissioners and the former owner; the executor or administrator, of the former owner; or any member parent, spouse, or child of the immediate family former owner. The consideration of such the repurchase contract shall with a private party must include:

1. The total amount required to be paid in the notice to effect a redemption.
2. The total amount of all subsequent taxes with interest, penalties, and costs.

If the fair market value of such the property at the time of the repurchase thereof is less than the amount to be paid to effect a redemption, together with all subsequent taxes, interest, penalties, and costs under subsections 1 and 2, the board shall fix a fair and just sale price for such the property, and shall require the former owner, the executor or administrator, or any member of the immediate family, to. If a repurchase under this section is by contract for deed, the party making the repurchase must pay at least twenty-five percent of the total contract price in cash and the remainder shall must be payable in not to exceed no more than ten annual equal installments as the board of county commissioners may determine. Such installments shall bear interest at a rate determined by the. The board of county commissioners but shall not exceed establish the rate of interest for a contract for deed under this section, not exceeding the prime rate per annum as of interest established by the Bank of North Dakota for the month immediately preceding the month in which the contract was entered into until the contract is paid in full. Such contract shall further. A contract for deed under this section must provide that if the vendee repurchaser or the successor in interest fails to pay one or more of the installments when due, with interest, the board of county commissioners may cancel such the contract and thereupon all payments and improvements made by the vendee repurchaser or the successor in interest shall will be forfeited to the county as liquidated damages for breach of contract unless otherwise expressly provided. Upon the full performance of such completion of a cash sale or payments under a contract for deed under this section, the county auditor shall execute and deliver a deed conveying to the purchaser which shall be executed in the manner in which tax deeds are executed and shall have the legal effect prescribed by the terms of this chapter repurchaser the entire interest of the county in the property. Upon the execution and delivery of a deed or contract for deed under this section, the property becomes taxable to the repurchaser. In case of repurchase or contract for repurchase of such tax deed land before February first, such land shall property during January, the property must be assessed and taxed for the current that year, and the repurchaser shall be is entitled to the rental and landlord's share of crops on such land the property for such the year. In case of the repurchase or contract for repurchase of such tax deed land after January thirty first, the land shall property must not be assessed and taxed for the current year, and the county shall retain is entitled to the rental and landlord's share of the crops thereon on the property for that the year. In all cases wherein the The repurchase or contract for repurchase of tax deed land farmland is made

~~after January first, such repurchase or contract for repurchase, will be subject to an any existing farm lease of the lands so repurchased or contracted to be repurchased, property for the year in which such the repurchase or contract for repurchase is made.~~

SECTION 26. AMENDMENT. Section 57-28-19.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-19.1. Real estate sold to city to be marketable. ~~Where any A city that has purchased real estate pursuant to section 57-28-17 or 57-28-19 the city shall be property under this chapter is deemed to have marketable record title to such the property if all of the following apply:~~

1. The county deed conveying the property has been recorded.
2. The city has entered into possession of the property and continued its possession for three months or longer.
3. No lis pendens giving notice of the pendency of an action challenging the validity of tax proceedings or of the deed has been recorded within three months of the date on which the city entered into possession of the property, or on July 1, 1985, whichever is later.

~~A subsequent conveyance of the property by the city shall that is deemed to have marketable record title may convey title free of any claims based on any defects a defect in the process of tax title acquisition by the county through which the city obtained title to the property. A If title of the city is deemed marketable under this section, a claimant who would be entitled to some claim on the property because of a defect in the process by which the city obtained title thereto shall, when the title of the city is deemed marketable under this section, have has instead the right to recover from the city the net value of that claim, subject to the statutory restrictions on claims against a city. For the purpose of this section, the fact of possession by the city may be shown of record by one or more affidavits which that contain the legal description of the real estate property and show that the city entered into possession of the property and continued such possession for three months or longer. The posting on the property of a sign or notice, legible from the street adjacent to the property, indicating stating that the property is owned or for sale by the city shall be deemed is an act of possession by the city, but shall is not be required.~~

SECTION 27. AMENDMENT. Section 57-28-20 of the North Dakota Century Code is amended and reenacted as follows:

57-28-20. Disposition of proceeds of sales. All proceeds realized from the sales of the lands, either at public or private sale, shall of property under this chapter must be apportioned as regular tax payments are apportioned among and within taxing districts in which the property is located, as follows:

1. The county treasurer shall issue a regular tax receipt in the name of the county, commencing beginning with the earliest year for which the taxes ~~were~~ are delinquent. Tax receipts ~~shall~~ must be written for the original amount of the tax, without penalty and interest. If the property was sold for an amount sufficient to

- cover all outstanding taxes, including the year in which the county acquired tax title and special assessments, tax receipts shall must be written for all such years, including all special assessments, and the remainder, if any, shall and any remaining amount must be credited to the general fund of the county.
2. If the property is sold under a contract, the county treasurer shall issue a tax receipt for the oldest year's taxes receipts, beginning with the earliest year for which taxes or special assessments are delinquent, without penalty and interest, and all subsequent payments made on the contracts shall contract must be applied in a similar manner to the earliest remaining unpaid taxes or special assessments. Any payment under the contract after all taxes and special assessments are paid must be credited to the county general fund.
  3. If the property is sold for less than the total amount of the taxes due, including the year in which a tax deed is issued, the treasurer shall write tax receipts beginning with the oldest earliest year, and for as many subsequent years as the proceeds realized from the sale will satisfy, and the remainder of any unpaid general taxes or special assessments shall be canceled by the board of county commissioners by general resolution at the time prescribed in this chapter.

SECTION 28. AMENDMENT. Section 57-28-21 of the North Dakota Century Code is amended and reenacted as follows:

57-28-21. Cancellations from record. After any real estate has been sold for cash or upon a contract for deed which has been fully performed and a deed has been issued and delivered to the purchaser thereof, the board of county commissioners, by general resolution, shall provide for direct by resolution the cancellation and removal from the record of all general taxes and special assessments remaining of record against the premises sold property at the date of sale, except those installments of special assessments certified or to be certified to the county auditor which that had not become due at the date of the sale. It shall be the duty of the The county auditor shall immediately to send a copy of the said resolution to the state office of management and budget and to notify the county treasurer of the cancellation and removal thereof.

SECTION 29. AMENDMENT. Section 57-28-22 of the North Dakota Century Code is amended and reenacted as follows:

57-28-22. Sale of city lots owned by county more than ten years. Where The board of county commissioners may sell property acquired by the county at tax sale without notice of the expiration of the time of redemption from the tax sale if all of the following apply:

1. An The property is within an addition to any the city which has been platted into lots for more than thirty years.
2. No streets or, sidewalks, or other improvements have been opened or graded made in such the addition.
3. No other improvements have been made, in such addition;

- 4- Lots and premises in such addition have been sold to the county for delinquent taxes;
- 5- More than ten years have elapsed since such the tax sale, at which the county acquired the property.
- 6- 4. Said lots still are owned by The property has remained under ownership of the county; and.
- 7- 5. No subsequent taxes have been paid thereon;

the board of county commissioners may sell and convey all the title and interest of the county in and to such lots or premises without giving any notice of the expiration of the time of redemption from such sale for taxes on the property since the county acquired ownership.

SECTION 30. AMENDMENT. Section 57-28-23 of the North Dakota Century Code is amended and reenacted as follows:

57-28-23. County lands may be leased. The board of county commissioners may lease all pieces or parcels of real any property acquired by the county by tax deed, other than lands leased for oil and gas purposes, and for which sale cannot be had as provided by law, as, in the judgment of the said board shall seem best suited to advance the public interests. A mineral lease in farmland acquired by the county by tax deed may not be entered until thirty days after giving the former owner or other interested party notice of the right to redeem the property from tax sale in the manner provided in section 57-28-18.

SECTION 31. AMENDMENT. Section 57-28-24 of the North Dakota Century Code is amended and reenacted as follows:

57-28-24. Terms of leases. All leases of such lands shall property under this chapter must be made subject to sale and shall be limited in duration to a term not to exceed exceeding five years. In the discretion of said county commissioners, any grazing land However, property may be leased for grazing purposes without being subject to sale and for a term of not to exceed not exceeding ten years, to any duly incorporated cooperative grazing association, any duly incorporated soil conservation district, and duly incorporated mutual aid corporation, or to any individual, within this state. Farmlands sold after January first of any year shall be sold subject to the existing lease for that year.

SECTION 32. AMENDMENT. Section 57-28-25 of the North Dakota Century Code is amended and reenacted as follows:

57-28-25. Board of county commissioners may act as leasing agents or may employ a county land agent. The board of county commissioners shall may not expend more than ten percent of the total lease revenue collected from all leases of land to defray any and all under this chapter for costs in connection with the supervision and collection of rentals. Such The board may authorize one or more of its members of that board to attend to the leasing, handling, or collection of rentals in connection with such lands in the whole or part of the county, or it may to act as the county land agent or employ a competent and experienced person county land agent to manage, lease, and collect rentals for all lands any property owned by the county, who shall be known as the. The county land agent and who shall must be bonded by the

state bonding fund, in such an amount as determined by the board of county commissioners shall determine, to secure the faithful discharge of his official duties, and conditioned that such. The agent shall deposit all rentals and fees amounts collected by him with the county treasurer and take his obtain a receipt therefor. The board of county commissioners shall fix the compensation and limit the expenses which such of the agent may incur in managing, leasing, and collecting such rentals. Such, but the compensation and expenses shall may not exceed ten percent of the total revenue collected by such the agent and shall must be paid out of the revenue derived from the rentals of county lands. Any county commissioner doing any such work shall receive a per diem of not to exceed three dollars per day and mileage not to exceed five cents per mile {1.61 kilometers} for each mile {1.61 kilometers} necessarily traveled in performing such duties. No county commissioner shall receive such per diem and mileage as leasing agent during any day in which he makes a charge as county commissioner, and services rendered by a commissioner as such leasing agent shall be considered entirely separate and apart from his duties or services as county commissioner.

SECTION 33. AMENDMENT. Section 57-28-26 of the North Dakota Century Code is amended and reenacted as follows:

57-28-26. Disposition of rental revenue. All the net revenue derived from a lease of forfeited land, including leases of property under this chapter and all federal payments made to the county in connection therewith, in an amount not less than ninety percent of the total revenue collected, for property acquired by the county by tax deed shall be paid into the county treasury. On or before January tenth in each year the county treasurer shall apportion and distribute all net revenues so paid into the county treasury, these amounts received in the previous calendar year to the county, city, school district, township, or other taxing districts, in which the property is located in the proportions which current proportion that the previous year's general fund levies levy in the taxing districts wherein said lands are district bears to the total of general fund levies of all taxing districts in which the property is located bear to the total net revenue so collected.

SECTION 34. AMENDMENT. Section 57-28-27 of the North Dakota Century Code is amended and reenacted as follows:

57-28-27. Discretion of county commissioners in lease or sale of tax deed lands. In order to conserve and protect the interests of the state, the The board of county commissioners may refuse to sell or lease any agricultural lands held by the county under a tax deed when it is found that the sale or lease thereof if the board finds that any of the following would result:

1. Will The use would seriously impair the fertility of such tract the property or adjoining lands by use thereof which will result in property due to wind or water erosion.
2. Will The property will become a part of an agricultural unit which that will be too small or too large to be operated in conformance with the best interests of the community and taxing districts, and therefore the use may result in failure of the owner or lessee to pay taxes upon the said land, or property.



3. Would The use would result in lessening the value or marketability of adjacent tracts of such lands property held by the county at such time.

The board of county commissioners may classify agricultural lands held by the county so as to determine which tracts are properly usable according to suitability for tillage, and which tracts are usable only for haying, or grazing purposes. Applicants for deeds or leases may file with the county auditor, before the time set for sale or leasing of county agricultural tax lands, a statement in such form as may be prescribed by the board of county commissioners, giving information as to of the size of the farming unit for which such lands are the property is desired, the uses intended therefor for the property, and such any other information relative to the planned operation of such lands as the property which is required by the board of county commissioners may deem reasonably necessary for its information.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 660

SENATE BILL NO. 2127  
(Committee on Appropriations)  
(At the request of the Office of Management and Budget)

### STATE REFUND ACCOUNT

AN ACT to create and enact a new section to chapter 57-27 of the North Dakota Century Code, relating to the creation of a state refund account; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-27 of the North Dakota Century Code is created and enacted as follows:

State refund account. The office of management and budget shall establish a state refund account. The account is to be used by each office, agency, or institution that must deposit funds collected, directly to the general fund.

The office of management and budget shall establish accounting requirements for the account in accordance with the central accounting system.

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

Approved March 11, 1991  
Filed March 11, 1991

# CHAPTER 661

SENATE BILL NO. 2345  
(Senators Heinrich, Stenehjem)  
(Representatives Nicholas, Ritter)

## PUBLISHED NOTICE BY STREET ADDRESS

AN ACT to amend and reenact sections 32-19-30, 35-22-07, subsection 2 of section 57-27-02, sections 57-28-06, 57-28-07, and 57-28-14 of the North Dakota Century Code, relating to publication of street addresses as well as legal descriptions when published notice is required or allowed for real estate foreclosures, notices of tax sale, or notices of redemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-19-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-19-30. Service by publication - How made. Service of the summons may be made by publication if the plaintiff files a verified complaint in the office of the clerk of the district court of the county where the action is commenced, setting forth a claim for relief in favor of the plaintiff and against the defendants, for the foreclosure of a mortgage or other lien upon real estate, and when the plaintiff files in said office an affidavit signed by the plaintiff or his attorney substantially in the following form:

STATE OF NORTH DAKOTA            )  
  ) ss.  
County of ----- )

----- being first duly sworn upon oath deposes and says that he is the (attorney for) ----- plaintiff in the above entitled action:

Affiant further says that the defendants (naming them) ----- appear to have an interest in or lien or encumbrance upon the real estate described and listed by street address, if any, in the complaint in this action, that such interest or lien is subject and inferior to the lien of the plaintiff being foreclosed; that plaintiff seeks no personal judgment against the defendants, if any, (naming them) ----- and seeks only to bar and exclude said defendants from any interest in or lien or encumbrance upon the real estate described in the complaint, save and except the right of redemption as provided by law; that the residences of the defendants, if any, (naming them) ----- are not shown upon the records of the office of the register of deeds, county auditor, or clerk of the district court of ----- County, that being the county in which the real estate involved in this action is situated; that the residences of the defendants, if any, (naming them) ----- are as follows: -----; that affiant does not know the residences of the defendants, if any, (naming

them) -----; that the defendants, if any, (naming them) ----- are deceased, and it does not appear by the records in the office of the judge of the county court in and for ----- County, that being the county in which the real estate described in the complaint in the action is situated, that any administration upon the estate of said defendant is now pending; and that the defendants, if any, (naming them) ----- are deceased, and that ----- of ----- is the duly appointed, qualified, and acting administrator or executor, as the case may be, of the estate of said deceased.

The failure to include the street address in the affidavit does not affect the validity of the affidavit.

SECTION 2. AMENDMENT. Section 35-22-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-22-07. Notice of sale - Form. The notice of sale must be in substantially the following form:

Notice is hereby given that that certain mortgage, executed and delivered by -----, mortgagor, to -----, mortgagee, dated the ----- day of -----, 19---, and filed for record in the office of the register of deeds of the county of ----- and state of North Dakota on the ----- day of -----, 19---, and recorded in book ----- of ----- at page ----- (and assigned by said mortgagee to -----), will be foreclosed by a sale of the premises in such mortgage and hereinafter described at the front door of the courthouse in the county of ----- and state of North Dakota at the hour of ----- o'clock ---m., on the ----- day of -----, 19---, to satisfy the amount due upon such mortgage on the day of sale. The premises described in such mortgage and which will be sold to satisfy the same are described as follows: (here insert description and street address, if any).

There will be due on such mortgage at the date of sale the sum of ----- dollars.

The failure to include the street address in the notice does not affect the validity of the notice.

\* SECTION 3. AMENDMENT. Subsection 2 of section 57-27-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A notice of expiration of the period of redemption shall be delivered to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state, but if the owner is a nonresident of this state, the notice shall be served by registered or certified mail addressed to the owner at his last known post-office address and by publication once in each week for three consecutive weeks in some newspaper printed and published in the county where the lands to which the notice relates are located, and if no newspaper is published therein, then in some newspaper printed and published at the capital of the state. If notice is published under this section, it must contain the description and any street address of the property. However,

\* NOTE: Section 57-27-02 was also amended by section 2 of House Bill No. 1427, chapter 659.

the failure to include the street address in the notice does not affect the validity of the notice.

\* SECTION 4. AMENDMENT. Section 57-28-06 of the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor, on or before August first of each year, shall serve notice of the expiration of the period of redemption by publication as to all tracts of real estate upon which such notice is served by registered or certified mail. Such notice may include any number of parcels of real estate, and only one heading shall be necessary for the entire list. The notice must contain the description and any street address of each parcel of property. However, the failure to include the street address in the notice does not affect the validity of the notice. The auditor shall include in the amounts stated in such notice the cost of publication of the notice. Such notice shall be published once before August first in the official newspaper of the county wherein such real estate is situated.

SECTION 5. AMENDMENT. Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption to be served by publication shall be substantially in the following form:

I, -----, county auditor, of ----- County, North Dakota, hereby do give notice that the real estate hereinafter described was sold to the county at the annual tax sale on December -----, 19--, for delinquent taxes, that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county, and that unless redemption shall be made from such tax sale, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lienholders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to such real estate whatsoever. The following is a list of the real estate sold at such tax sale on which the period of redemption will expire on October first. Opposite each description of such real estate appears any street address of the property, the name of the owner of the record title thereof, and the amount which must be paid to redeem from such tax sale before the period of redemption expires. Said sum includes the amount for which said land was sold, together with subsequent delinquent taxes for ----- and prior years, and interest, penalties, and cost of service. (List descriptions, names of owners, and amount necessary to redeem.)

Given pursuant to authority of law this ----- day of -----, 19--.

The failure to include the street address in the notice does not affect the validity of the notice.

\* NOTE: Section 57-28-06 was also amended by section 13 of House Bill No. 1427, chapter 659.

\* SECTION 6. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale shall include a description and any street address of all real estate to be sold, with the minimum sale price thereof, and shall be given:

1. By posting a notice at the front door of the courthouse at least fifteen days prior to the date of sale; and
2. By publishing a notice in the official newspaper of the county once, not less than ten days prior to the date of sale.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 1992.

Approved March 25, 1991  
Filed March 26, 1991

\* NOTE: Section 57-28-14 was also amended by section 20 of House Bill No. 1427, chapter 659.

## CHAPTER 662

SENATE BILL NO. 2185  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### TELEPHONE COMPANY TAXATION

AN ACT to amend and reenact section 57-34-01 and subsection 1 of section 57-34-03 of the North Dakota Century Code, relating to the taxation of telephone companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, and corporations for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.
2. "Adjusted telephone operating receipts" means telephone operating receipts less all amounts paid by the reporting telephone company to an individual, partnership, or corporation for connecting fees, switching charges, access charges, and directory assistance.
3. "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.
4. "Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty-first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty-first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.
- ~~3-~~ 5. "Station" shall mean means a telephone station subscriber line located in this state with a distinct call number designation or distinct extension number designation.

6. "Telephone company" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, or other organizations which are engaged in the business of furnishing means of communication by telephone within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less.
- 2- 7. "Telephone operating receipts" shall consist of all revenue received, including but not limited to assessments collected from members of mutual associations, or organizations, in place of rentals less switching charges and tolls paid to other companies includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin-operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 11 of section 49-21-01 attributable to this state, and toll business gross revenues as defined in this section. For a telephone company operating on any form of mutual basis, "telephone operating receipts" includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" does not include income from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two-way communication, radio, one-way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations, or revenues from the transfer, sale, or lease of property not devoted to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.
8. "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.
9. "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by two.

SECTION 2. AMENDMENT. Subsection 1 of section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

1. On or before August first of each year, the tax commissioner shall compute the total tax to be assessed against each telephone company in this state in the following manner:
  - a. Telephone companies maintaining an average of one and twenty-five hundredths telephone stations or less per mile [1.61



kilometers] of telephone line operated in this state shall be taxed at the rate of one-half of one percent of their adjusted telephone operating receipts.

- b. Telephone companies maintaining an average of not less than one and twenty-six hundredths and not more than one and seventy-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one percent of their adjusted telephone operating receipts.
- c. Telephone companies maintaining an average of not less than one and seventy-six hundredths and not more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of one and one-half of one percent of their adjusted telephone operating receipts.
- d. Telephone companies maintaining an average of more than two and twenty-five hundredths telephone stations per mile [1.61 kilometers] of telephone line operated in this state shall be taxed at the rate of two percent of their adjusted telephone operating receipts.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 663

HOUSE BILL NO. 1613  
(Representatives Dorso, Mahoney)  
(Senators Tomac, Dotzenrod)  
(Approved by the Committee on Delayed Bills)

### BRANCH BANK TAXATION

AN ACT to create and enact a new section to chapter 57-35 and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to the taxation of the branch offices of a banking subsidiary of any out-of-state bank holding company; to amend and reenact subsection 1 of section 57-35-01 and subsection 1 of section 57-35.2-01 of the North Dakota Century Code, relating to definitions for purposes of bank taxation; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-35-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Bank" shall include any banking association organized under the laws of the United States or of the state of North Dakota, located in and having its principal place of business in this state. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of any out-of-state bank holding company to establish a branch office in this state, the definition of "bank" also includes the branch office of the bank or the banking subsidiary of the out-of-state bank holding company.

SECTION 2. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Payment of tax if branch banking is authorized. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of an out-of-state bank holding company to establish a branch office in this state, the tax commissioner may require the branch office to pay tax under this chapter based on any method of allocation and apportionment which would fairly represent the extent of the branch's business activity in this state.

SECTION 3. AMENDMENT. Subsection 1 of section 57-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Bank" means any banking association organized under the laws of the United States or of the state of North Dakota located in or having a place of business in this state. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of any out-of-state bank holding company to establish a branch office in this state, the definition of "bank"

also includes the branch office of the bank or the banking subsidiary of the out-of-state bank holding company.

SECTION 4. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Payment of tax if branch banking is authorized. If the Congress of the United States enacts legislation that would allow a bank or a banking subsidiary of an out-of-state bank holding company to establish a branch office in this state, the tax commissioner may require the branch office to pay tax under this chapter based on any method of allocation and apportionment which would fairly represent the extent of the branch's business activity in this state.

SECTION 5. APPLICATION. This Act must not be construed as committing this state in any manner to a policy of permitting interstate branch banking.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 664

HOUSE BILL NO. 1484  
(Gorman)

### FINANCIAL INSTITUTION LOSS CARRY FORWARD

AN ACT to create and enact a new section to chapter 57-35, a new section to chapter 57-35.1, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to taxation of banks, trust companies, and building and loan associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a bank or trust company for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 2. A new section to chapter 57-35.1 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a building and loan association for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 3. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Net operating loss - Carry forward. If the net operating loss of a bank, trust company, or building and loan association for any taxable period beginning on or after January 1, 1991, exceeds its net income, the excess may be carried forward for the same time period that an identical federal net operating loss may be carried forward.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 1990.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 665

HOUSE BILL NO. 1208  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### TOBACCO TAX STAMPS ELIMINATED

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to allowing cigarette distributors to retain a portion of tax collections for administrative expenses; to amend and reenact sections 57-36-01, 57-36-02, 57-36-07, 57-36-09, 57-36-14, 57-36-18, 57-36-26, and 57-36-33 of the North Dakota Century Code, relating to removing the requirement that cigarettes contain tax stamps and to the filing of monthly tax returns for tobacco products; to repeal sections 57-36-08, 57-36-10, 57-36-11, 57-36-12, and 57-36-13 of the North Dakota Century Code, relating to removing the requirement that cigarettes contain tax stamps; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

57-36-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Cigar" means any roll of tobacco wrapped in tobacco.
2. "Cigarette" means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
3. "Consumer" means any person who has title to or possession of cigarettes, snuff, cigars, or other tobacco products in storage, for use or other consumption in this state.
4. "Dealer" shall include any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, snuff, or other tobacco products.
5. "Distributor" shall include any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, snuff, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, snuff, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
6. ~~"Insignia" shall include or mean the impression or mark made on the cigarettes, or the package containing the same, approved by the tax commissioner, as provided in section 57-36-11.~~

- ~~7-~~ "Licensed dealer" shall mean a dealer licensed under the provisions of this chapter.
- ~~8-~~ 7. "Licensed distributor" shall mean a distributor licensed under the provisions of this chapter.
- ~~9-~~ 8. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part.
- ~~10-~~ 9. "Person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, or association however formed.
- ~~11-~~ 10. "Sale" or "sell" shall apply to gifts, exchanges, and barter.
- ~~12-~~ "Stamp" shall mean the stamps prepared by the tax commissioner as provided in section ~~57-36-08.~~
- ~~13-~~ 11. "Storage" means any keeping or retention of cigarettes, snuff, cigars, or other tobacco products for use or consumption in this state.
- ~~14-~~ 12. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, snuff, cigars, or other tobacco products.

\* SECTION 2. AMENDMENT. Section 57-36-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, must secure a license from the attorney general before engaging or continuing to engage in business. A separate application and license is required for each distributor at each outlet or place of business within the state, and a separate dealer's license is required for each retail outlet when a person owns or controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer will be granted a distributor's license except a retailer who, in the usual course of business, performed a distributor's or wholesaler's function for at least one year prior to filing the license application. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business, the type of business, and other information as required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license must be accompanied by a fee of twenty-five dollars and a surety bond approved by the attorney general ~~in the sum of not less than one thousand dollars or more than five thousand dollars.~~ Each application for a dealer's outlet license must be accompanied by a fee of fifteen dollars. ~~Stamps or insignia provided for in this chapter may be sold to and affixed only in North Dakota by licensed distributors. Licensed dealers may sell, buy, or have in their possession only cigarettes upon which stamps or insignia were previously affixed.~~ A distributor's license does not authorize the holder to make retail sales. Each license issued must be prominently displayed on the premises covered by the license.

SECTION 3. AMENDMENT. Section 57-36-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Section 57-36-02 was also amended by section 4 of Senate Bill No. 2174, chapter 78.

57-36-07. Packaging - Presumption from possession —Stamps to be affixed. Cigarettes must be packaged and stamped as follows:

1. All cigarettes sold in this state must be in packages containing five or more cigarettes each.
2. ~~Within seventy-two hours of receipt by the licensee, each package of cigarettes, except as otherwise provided in this chapter, must have a securely affixed stamp denoting the tax, and each stamp must be properly canceled prior to sale or removal for consumption, under regulations prescribed by the tax commissioner.~~
- 3- If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
- 4- 3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers. ~~Each package of cigarettes, except as otherwise provided, must have a securely affixed stamp denoting the tax. Stamps must be canceled as provided in this chapter, and possession of any unstamped package of cigarettes is prima facie evidence of a violation of this chapter.~~

SECTION 4. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, snuff, cigars, or other tobacco products made by them, and shall be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, snuff, cigars, or other tobacco products, shall keep and preserve for one year all invoices of cigarettes, cigarette papers, snuff, cigars, or other tobacco products purchased by ~~him, together with all receipts issued by the state for stamps purchased by him~~ the distributor, and shall permit the state tax commissioner, ~~his~~ his and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, ~~his~~ his and assistants, authorized agents, ~~or and~~ representatives, ~~in ascertaining whether the stamps required by this chapter have been purchased and used, or of the state tax commissioner in determining the amount of such~~ the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, snuff, cigars, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale.
2. On or before the ~~tenth fifteenth~~ day of ~~January, April, July, and October of each year~~ each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to

such officer the tax commissioner all purchases and sales of cigarettes, cigarette papers, snuff, cigars, or other tobacco products made from or to any persons either within or without this state during the preceding three months; provided, however, that the tax commissioner shall have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with any remittance which might be due shall be filed before the tenth day of the month following the month for which the returns are filed, showing the names and addresses of the seller and of the buyer; the date of such sale or purchase; and the quantity and make of all cigarettes, cigarette papers, snuff, cigars, or other tobacco products month. The tax levied by this chapter shall be payable monthly and shall be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.

- 3- Any person violating any provision of this section shall be guilty of a class B misdemeanor.

SECTION 5. AMENDMENT. Section 57-36-14 of the North Dakota Century Code is amended and reenacted as follows:

57-36-14. Procedure in case of seizure - Determination - Judgment. The procedure in case of seizure of cigarettes or, equipment as provided in ~~section 57-36-13~~, or any other product taxed pursuant to this chapter, shall be as follows:

1. Upon the seizure of any cigarettes and within two days thereafter, the officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and shall file a copy thereof with the tax commissioner.
2. Within ten days after the date of the service of such inventory, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may file a demand for a judicial determination of the question as to whether such property was, or lawfully is, subject to seizure and forfeiture. Thereupon the tax commissioner, within thirty days, shall institute an action in the district court of the county where such seizure was made to determine the issue of forfeiture. Such action shall be brought in the name of the state of North Dakota, and shall be prosecuted by the state's attorney, the tax commissioner, or by the attorney general. The district court shall hear such action as a court case, and shall try and determine the issues of law and fact involved.
3. In case a judgment of forfeiture is entered, the tax commissioner, unless such judgment is stayed pending an appeal to the supreme court, as soon as convenient, shall sell such forfeited property and cover the proceeds, less court costs, into the common school fund of the state.
4. In case a demand for a judicial determination is made and no action is commenced as provided in this section, such property shall be released by the tax commissioner and redelivered to the person entitled thereto.



5. In the event that no demand for judicial determination is made, such seized property shall be deemed forfeited to the state by operation of law, and the tax commissioner thereupon may sell the same.
6. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation pursuant to the provisions of this chapter, the officer making the seizure shall file an inventory, and upon a demand for a judicial determination as provided in this section, the tax commissioner, within thirty days thereafter, shall commence an action in the district court of the county where such seizure was made to declare a forfeiture of such vehicle or other means of transportation, and such action shall be heard and determined as other forfeiture actions instituted under this chapter.
7. Whenever the tax commissioner is satisfied that any person from whom property is seized was acting in good faith and without intent to evade the revenue provisions of this chapter, he shall release the property seized without further legal proceedings.

SECTION 6. AMENDMENT. Section 57-36-18 of the North Dakota Century Code is amended and reenacted as follows:

57-36-18. Tax commissioner to administer chapter. In administering this chapter the tax commissioner and ~~his~~ agents of the tax commissioner shall exercise the following powers:

1. The tax commissioner and ~~his~~ authorized agents of the tax commissioner shall enforce the provisions of this chapter and shall have the powers of peace officers. They may arrest violators of the provisions of this chapter and enter complaint before any court of competent jurisdiction, and may seize without formal warrant, and use as evidence, any forged, counterfeit, spurious, or altered license or stamp found in the possession of any person in violation of this chapter.
2. The tax commissioner may prescribe rules and regulations not inconsistent with the provisions of the chapter for its detailed and efficient administration.

\* SECTION 7. AMENDMENT. Section 57-36-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, snuff, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty percent of the wholesale purchase price at the time ~~such~~ the products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction; provided, that the dealer may

\* NOTE: Section 57-36-26 was also amended by section 2 of House Bill No. 1509, chapter 666.

elect to report and remit the tax on ~~his~~ the cost price of such the products to the dealer rather than on the wholesale purchase price. The proceeds of such the tax, together with such the forms of return and in accordance with such any rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a ~~calendar quarterly~~ monthly basis on or before the ~~tenth~~ fifteenth day of the month following the ~~quarterly~~ monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

2. If cigars or snuff or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section shall apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in such the other state is twenty percent of the wholesale purchase price or more, then no tax shall be due on such the article. The provisions of this subsection shall apply only if such the other state allows a tax credit with respect to the excise tax on cigars, snuff, and other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section shall be subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of such the tax for each month of delay or fraction thereof excepting the month within which such the return was required to be filed or such the tax became due. The tax commissioner, if satisfied that the delay was excusable, may ~~remit~~ waive all or any part of such the penalty. Such The penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
4. All moneys received by the tax commissioner under the provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
5. Repealed by S.L. 1975, ch. 106, § 673.

SECTION 8. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Deduction to reimburse licensed distributor for administrative expenses.

1. A licensed distributor who pays the tax due under this chapter within the time limitations prescribed may deduct and retain one and one-half percent of the tax due to reimburse the distributor

for expenses incurred in keeping records, preparing and filing returns, remitting the tax, and supplying information requested by the commissioner.

2. The total deduction allowed by this section may not exceed one hundred dollars per month for each licensed distributor.

SECTION 9. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter-

- 1- ~~Any any~~ person who violates any provision of this chapter shall be guilty of a class A misdemeanor. All cigarettes, cigarette papers, snuff, cigars, or other tobacco products in ~~his~~ the possession of the person or in ~~his~~ the place of business of the person shall be confiscated and forfeited to the state.
- 2- ~~Any consumer who purchases any package of cigarettes which does not bear the stamp or insignia placed thereon pursuant to the provisions of this chapter, and any person who shall use or consume within this state any cigarette, unless the same shall be taken from a package or container having attached thereto the stamp or insignia required by this chapter, shall be guilty of a class B misdemeanor.~~

SECTION 10. REPEAL. Section 57-36-13 of the North Dakota Century Code, and sections 57-36-08, 57-36-10, 57-36-11, and 57-36-12 of the 1989 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 11. EFFECTIVE DATE. This Act becomes effective on September 1, 1991.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 666

HOUSE BILL NO. 1509  
(Ritter, Pyle)

### TOBACCO TAXES

AN ACT to amend and reenact section 57-36-25, subsection 1 of section 57-36-26, subsection 1 of section 57-36-28, and section 57-36-32 of the North Dakota Century Code, relating to taxation of tobacco products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-25. Cigars, snuff, and other tobacco products - Excise tax on wholesale purchase price - Penalty - Reports - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, sold in this state an excise tax at the rate of ~~twenty~~ twenty-two percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.
2. Any person failing to file any prescribed forms of return or to pay any tax within the time required or permitted by this section shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof excepting the portion of the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
3. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end

of each month and deposited in the state treasury to the credit of the general fund.

4. Repealed by S.L. 1975, ch. 106, § 673.

\* SECTION 2. AMENDMENT. Subsection 1 of section 57-36-26 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~twenty~~ twenty-two percent of the wholesale purchase price at the time ~~such the~~ products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction ~~provided that~~. However, the dealer may elect to report and remit the tax on ~~his the dealer's~~ cost price of ~~such the~~ products rather than on the wholesale purchase price. The proceeds of ~~such the~~ tax, together with ~~such the~~ forms of return and in accordance with ~~such the~~ rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit such a remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon ~~such those~~ consumers, at the rate of ~~twenty~~ twenty-two percent of the cost to the consumer of ~~such those~~ products.

SECTION 4. AMENDMENT. Section 57-36-32 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~eight nine~~ and one-half mills on each ~~such~~ cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying ~~such the~~ tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

Approved April 16, 1991  
Filed April 18, 1991

\* NOTE: Section 57-36-26 was also amended by section 7 of House Bill No. 1208, chapter 665.

## CHAPTER 667

SENATE BILL NO. 2124  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### ESTATE TAX FEDERALIZATION DATE AND SALES TAX INTEREST RATE

AN ACT to amend and reenact sections 57-37.1-01 and 57-39.2-11 of the North Dakota Century Code, relating to the definition of "federal gross estate" and "federal taxable estate" for estate tax purposes and interest to be paid on sales tax extensions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-37.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-37.1-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Federal gross estate" means the gross estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, ~~1988~~ 1990.
2. "Federal taxable estate" means the taxable estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of 1986, as amended through December 31, ~~1988~~ 1990.
3. "Nonresident decedent" means an individual who at the time of his or her death was not a resident decedent.
4. "Personal representative" or "personal representative of an estate" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent.
5. "Resident decedent" means an individual whose residence at the time of his or her death was in North Dakota according to the rules for determining residence as provided in section 54-01-26.
6. "Situs of property" means, as to real property, the state or country in which it was situated at the time of the decedent's death; as to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; as to intangible personal property, the state or country in

which the decedent was a resident at death; and when used in reference to property having a situs in North Dakota it also means the county in which the property has its situs as determined in accordance with this subsection. Provided, however, that as to intangible personal property a resident may specify in his or her will that the situs of all, or of particular items of, intangible personal property shall be at any location within a county or counties in this state at which he or she had resided for at least fifteen years after attaining eighteen years of age.

7. "Tax commissioner" means the tax commissioner of the state of North Dakota.

SECTION 2. AMENDMENT. Section 57-39.2-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-11. Return of gross receipts.

1. Except as provided in section 57-39.2-12 for monthly reports and payments, on or before the last day of the month following the close of the first quarterly period, and on or before the last day of the month following each subsequent quarterly period of three months, the retailer shall make out a return for the preceding quarterly period in ~~such~~ the form and manner as may be prescribed by the commissioner, showing the gross receipts of the retailer, the amount of the tax for the period covered by ~~such~~ the return, and ~~such~~ any further information as the commissioner may require to enable ~~him~~ the retailer correctly to compute and collect the tax herein levied. The commissioner, upon request by any retailer and a proper showing of the necessity therefor, may grant unto ~~such~~ the retailer an extension of time not to exceed thirty days for making ~~such~~ a return. If ~~such~~ the extension is granted to any ~~such~~ retailer, the time in which ~~he~~ the retailer is required to make payment as provided for in section 57-39.2-12 shall be extended for the same period but interest shall be charged upon the amount of the deferred payment at the rate of ~~eight~~ twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
2. The commissioner may require the filing of returns and payment of tax on a monthly, quarterly, annual, or other basis when the commissioner deems it necessary to ensure payment of the tax imposed by this chapter. Compensation for administrative expenses under sections 57-39.2-12.1 and 57-40.2-07.1 is not allowed under this section unless the retailer qualifies for compensation under sections 57-39.2-12 and 57-40.2-07.
3. Returns shall be signed by the retailer or ~~his~~ a duly authorized agent of the retailer and shall contain a written declaration that they are made and subscribed under the penalties of this chapter.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for all deaths occurring after December 31, 1990.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 668

SENATE BILL NO. 2128  
(Committee on Finance and Taxation)  
(At the request of the State Treasurer)

### ESTATE TAX REFUND INTEREST

AN ACT to amend and reenact subsection 3 of section 57-37.1-08 of the North Dakota Century Code, relating to estate tax refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-37.1-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. In case an overpayment of such tax has been made for the estate of a decedent, such overpayment must be repaid out of any undistributed estate taxes in the hands of the state treasurer upon an order of the tax commissioner. Any overpayment to be repaid shall bear interest at the ~~rate of two-thirds of one percent per month or fraction thereof~~ Bank of North Dakota's money market demand account rate on the date of the tax commissioner's order to the state treasurer. Interest is to be computed from the time the tax was paid until the overpayment is repaid. Any interest owed by the state must be paid by the state treasurer from the appropriation for miscellaneous refunds approved by the legislative assembly. The state treasurer shall thereupon present and file with the appropriate county treasurers and city auditors a verified claim of such overpayment accompanied by a copy of the order of the tax commissioner for such refund and the county treasurers and city auditors shall pay such claim to the state treasurer.

Approved March 11, 1991  
Filed March 11, 1991



## CHAPTER 669

HOUSE BILL NO. 1195  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### ESTATE TAX LIENS

AN ACT to create and enact section 57-37.1-09.1 of the North Dakota Century Code, relating to liens for estate taxes; to amend and reenact sections 47-19-06 and 57-37.1-09 of the North Dakota Century Code, relating to liens for estate taxes and the termination of interests in joint tenancy and life estates; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-06 of the North Dakota Century Code is amended and reenacted as follows:

47-19-06. Death certificates - Joint tenant —~~Estate tax determination - Prima facie evidence of termination of estate held. In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which such the estate, title, interest, or lien was created, a copy of the record of the death certificate of any such the joint tenant or of the person upon whose life such the estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which such the record is made, to keep a record of the death of persons occurring within the jurisdiction of such the officer, may be recorded in the office of the register of deeds of the county in which such the lands are situated if, in cases where said decedent had an estate, title, or interest in, or lien upon, said lands, there has been recorded a certified copy of an order of a county court or a statement of the state tax commissioner relating to estate tax determination of said decedent's estate. The legal description of any property to which the recording of the death certificate relates must be attached to the death certificate. Such The certified copy of death certificate, or such the record thereof in said office, or a duly certified copy of such the last mentioned record, shall be prima facie evidence of the death of such the person and the termination of such the joint tenancy and of all such the estate, title, interest, and lien as was or is limited upon the life of such that person. The register of deeds shall forward a copy of the recorded death certificate to the tax commissioner.~~

SECTION 2. AMENDMENT. Section 57-37.1-09 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-09. ~~lien for taxes~~— Beneficiaries to share burden of tax.

~~Any tax imposed by this chapter shall be and shall remain a lien upon the property transferred, and upon all property acquired by~~

the personal representative for a period of ten years from the date of death of the decedent or until the tax is paid or a bond is given for its payment, whichever comes first, but such lien shall not affect any tangible or intangible personal property after it has passed to a bona fide purchaser for value.

- 2- The lien charged upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due on said real estate or separate parcel, or by the filing and acceptance of a bond for their payment, or by an order of the tax commissioner transferring such lien to other real estate owned by the person to whom said real estate or any separate parcel thereof passes.
- 3- The beneficiaries shall be are personally liable for their respective share of the tax imposed by this chapter, as well as the personal representative, and if the personal representative pays such the tax, he shall have the right to the personal representative may recover the tax from the beneficiaries in accordance with the provisions of section 30.1-20-16. No general statute of limitation shall may be considered as a bar to the collection of the respective share of the estate tax from each beneficiary. For the purposes of this chapter, the term "beneficiary" shall mean means any person receiving an interest in property of a decedent which is subject to inclusion in the decedent's federal gross estate and which had a situs in North Dakota at the time of decedent's death.
- 4- Any unpaid taxes imposed by this chapter shall be and remain a lien upon the property transferred, and upon all property acquired by the personal representative, for a period of ten years from the date of death of the decedent.
- 5- Any lien which may have attached to real property pursuant to the provisions of the various inheritance tax laws or estate tax laws that were in effect prior to the enactment of the provisions of this chapter shall terminate in accordance with the provisions of law that were in effect at the time the lien attached.

SECTION 3. Section 57-37.1-09.1 of the North Dakota Century Code is created and enacted as follows:

57-37.1-09.1. Lien for tax. Whenever any estate is liable to pay a tax, the amount of the tax, including any interest or addition to the tax, is a lien in favor of the state of North Dakota on the real and personal property of the estate from the time the tax commissioner files a notice of estate tax lien with the register of deeds of a county in which the real or personal property is situated. If the real or personal property is conveyed or transferred by the estate before the tax commissioner files a notice of estate tax lien, the tax, and any interest or addition to the tax, is a liability of the beneficiaries of the estate under the provisions of section 57-37.1-09 and the liability becomes a lien upon the property of the beneficiaries named in the notice of estate tax lien.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective for all deaths occurring after December 31, 1990, section 3 of this Act becomes effective on January 1, 1991, and this Act is retroactive to the dates contained in this section.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 670

SENATE BILL NO. 2554  
(Mathern)

### CORPORATE ALTERNATIVE MINIMUM INCOME TAX

AN ACT to amend and reenact section 57-38-01, subdivision c of subsection 1 of section 57-38-01.3, and section 57-38-30 of the North Dakota Century Code, relating to the elimination of the alternative minimum income tax for corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

- 0.1. "Chronically mentally ill" means a person who, as a result of a mental disorder, exhibits emotional or behavioral functioning which is so impaired as to interfere substantially with the person's capacity to remain in the community without verified supportive treatment or services of a long-term or indefinite duration. This mental disability must be severe and persistent, resulting in a long-term limitation of the person's functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment, and recreation.
1. "Corporation" includes associations, business trusts, joint stock companies, and insurance companies.
- 1.1. "Developmental disability" has the same meaning as defined in section 25-01.2-01.
2. "Domestic" when applied to a corporation means created or organized under the laws of North Dakota.
3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
  - a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances where the minimum investment by the lessor is less

than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.

- b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.
  - c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
  - d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.
4. "Foreign" when applied to a corporation means created or organized outside of North Dakota.
  - 4.1. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
    - a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless in addition to one or more of these conditions, the person has a mental disorder.
    - b. The declining mental abilities that accompany impending death.

- c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

- 4.2. "North Dakota alternative minimum taxable income" in the case of corporations means alternative minimum taxable income as computed under the Internal Revenue Code provisions in effect at the close of the corporation's taxable year; reduced by any interest received from obligations of the United States included in alternative minimum taxable income or in the computation of alternative minimum taxable income on the federal return; reduced by the federal income tax deduction computed under subdivision c of subsection 4 of section 57-38-01.3; increased by the amount of any net operating loss deductions to the extent that those items were deducted in determining federal alternative minimum taxable income; increased by the amount of any special deductions to the extent that those items were deducted in determining federal alternative minimum taxable income; and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01 and subdivision g of subsection 4 of section 57-38-01.3; with the remaining amount apportioned to North Dakota by the same fraction computed under the provisions of chapter 57-36, 57-38-1, or 57-59. The sum calculated pursuant to this subsection must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to this subsection, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.
5. "Person" includes individuals, fiduciaries, partnerships, and corporations.
6. "Resident" applies only to natural persons and includes, for the purpose of determining liability for the tax imposed by this chapter upon or with reference to the income of any income year, any person domiciled in the state of North Dakota and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than seven months of the income year within the state.
7. "Tax commissioner" means the state tax commissioner.
8. "Taxable income" in the case of individuals, estates, trusts, and corporations shall mean the taxable income as computed for an individual, estate, trust, or corporation for federal income tax purposes under the United States Internal Revenue Code of 1954, as amended, plus or minus such adjustments as may be provided by this act and chapter or other provisions of law. Except as otherwise

expressly provided, "taxable income" does not include any amount computed for federal alternative minimum tax purposes.

9. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax imposed by this chapter.
10. Any term, as used in this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

\* SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required by only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income shall be further reduced by federal alternative minimum tax when a federal credit for prior year minimum tax is taken. This reduction is limited to federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for prior year minimum tax is taken.

SECTION 3. AMENDMENT. Section 57-38-30 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income ~~or the North Dakota alternative minimum taxable income~~ of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and paid annually as in this chapter provided, ~~and which must be computed at the greater of the two calculations under subsections 1 and 2:~~

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.

\* NOTE: Subdivision c of subsection 1 of section 57-38-01.3 was also amended by section 1 of Senate Bill No. 2223, chapter 672.

- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
  - c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
  - d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
  - e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
  - f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. Six percent of the North Dakota alternative minimum taxable income. The calculation for North Dakota alternative minimum taxable income applies only if the corporation's federal alternative minimum tax liability exceeds the corporation's regular federal tax liability.
  3. To the extent the tax calculation under subsection 2 exceeds the tax calculation under subsection 1, a credit for the excess amount must be allowed against the tax liability for any future years calculated under subsection 1. This credit carryover is not allowed to the extent that the liability computed under subsection 2 would result if the only adjustments and items of tax preference taken into account to arrive at federal alternative minimum taxable income were exclusion preferences as defined in section 53(d)(1)(B) of the Internal Revenue Code.
  4. The credit allowed under subsection 3 for any taxable year may not exceed the excess, if any, of tax liability of the corporation for the taxable year as calculated under subsection 1 over the tax liability of the corporation for the taxable year as calculated under subsection 2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 671

HOUSE BILL NO. 1300  
(Kretschmar)

### QUALIFIED INVESTMENT FUND

AN ACT to create and enact a new subsection to section 57-38-01 and a new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to definition of qualified investment fund and exemption from income tax liability for distributions of a qualified investment fund; to amend and reenact subsections 3 and 4 of section 57-38-30.3 of the North Dakota Century Code, relating to exclusion from computation of income tax liability of distributions from a qualified investment fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-01 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

"Qualified investment fund" means any investment company or trust registered with the securities and exchange commission, or any segregated portfolio of assets of such a company or trust, which for the calendar year in which the distribution is paid:

- a. Has investments limited to interest-bearing obligations issued by or on behalf of this state, any political subdivision of this state, or any instrumentality of the United States government;
- b. Has, within thirty days after the close of the calendar year, provided to shareholders and the commissioner a detailed schedule of allocation of its assets and its sources of income showing that it is a qualified investment fund; and
- c. Has, within thirty days after the close of the calendar year, provided to each shareholder a statement of the amount of distributions earned by the shareholder in the calendar year which are attributable to income from obligations issued by or on behalf of this state, any political subdivision of this state, or any instrumentality of the United States government.

SECTION 2. A new subdivision to subsection 1 of section 57-38-01.2 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Reduced by the amount of any distribution described in subdivision c of section 1 of this Act received from a qualified investment fund.



SECTION 3. AMENDMENT. Subsections 3 and 4 of section 57-38-30.3 of the 1990 Special Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of section 1 of this Act from a qualified investment fund must be excluded from the numerator.
4. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. Interest income from United States obligations and other income not taxable to this state because of federal statutes, United States, or state constitutional provisions and distributions described in subdivision c of section 1 of this Act from a qualified investment fund must be excluded from the numerator.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 672

SENATE BILL NO. 2223  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

## INCOME TAX REVISIONS

AN ACT to amend and reenact subdivision c of subsection 1 of section 57-38-01.3, sections 57-38-05, 57-38-34.3, subsection 6 of section 57-38-42, subsection 6 of section 57-38-60, and section 57-38.1-04 of the North Dakota Century Code, and section 2 of chapter 27 of the 1989 Session Laws of North Dakota, relating to the elimination of cash basis federal income tax deductions for corporations, the exemption of certain income of nonresidents, limiting to individuals the optional contributions to the centennial tree program trust fund and wildlife fund, providing a penalty for failure to file a partnership return, removing the maximum bond limit to ensure the payment of income taxes withheld from wages, and the allocation of nonbusiness income; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 57-38-01.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Reduced by the amount of federal income taxes, paid or accrued as the case may be during the applicable tax year to the extent that such taxes were paid or accrued upon income which becomes a part of the North Dakota taxable income. Reduced by the amount of federal income tax liability, as computed under chapter 1 of the Internal Revenue Code of 1986, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that the taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 3 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted.

SECTION 2. AMENDMENT. Section 57-38-05 of the North Dakota Century Code is amended and reenacted as follows:

- \* NOTE: Subdivision c of subsection 1 of section 57-38-01.3 was also amended by section 2 of Senate Bill No. 2554, chapter 670.

57-38-05. Certain income of nonresidents not taxed. ~~Income~~ Unless the income, gains, or both, arise from transactions in the regular course of the taxpayer's trade or business carried on in this state, or unless the acquisition, management, and disposition of intangible personal property constitutes a trade or business carried on in this state, income of nonresidents derived from ~~interest from land contracts and income of nonresidents derived from~~, mortgages, stocks, bonds, and securities or other intangible personal property, or from the sale of ~~similar~~ intangible personal property, shall not be taxed.

SECTION 3. AMENDMENT. Section 57-38-34.3 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-34.3. Optional contributions to nongame wildlife fund. ~~On all tax returns under this chapter, a~~ An individual taxpayer may designate on the tax return of that individual a contribution to the nongame wildlife fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer individual. ~~On all the individual state income tax returns return the tax commissioner shall notify taxpayers the individual of this optional contribution.~~ The amount of these optional contributions must be transferred by the tax commissioner to the state treasurer for deposit in the nongame wildlife fund for use as provided in section 20.1-02-16.2.

SECTION 4. AMENDMENT. Section 2 of chapter 27 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

Optional contributions to centennial tree program trust fund. ~~On all tax returns under this chapter, a taxpayer~~ An individual may designate on the tax return of that individual a contribution to the centennial tree program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer individual. The tax commissioner shall notify taxpayers of this optional contribution on ~~all the individual state income tax returns.~~ The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the centennial tree program trust fund for use as provided in section 1 of this Act.

SECTION 5. AMENDMENT. Subsection 6 of section 57-38-42 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. In case of failure to file ~~on an information at the source return as required by subsection 1 by the date prescribed by this chapter in subsection 3, and after thirty days' notice to file is given by the tax commissioner, information at the source returns as required by subsection 1,~~ the tax commissioner may assess a penalty of ten dollars for each failure to file, not to exceed two thousand dollars. ~~In case of failure to file a partnership return as required by subsection 2 on the date prescribed in subsection 3, and after thirty days' notice to file is given by the tax commissioner, the tax commissioner may assess a penalty of five hundred dollars for each failure to file.~~

SECTION 6. AMENDMENT. Subsection 6 of section 57-38-60 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. As a condition precedent to the doing of business in the state of North Dakota, an employer who has not continuously maintained a domicile in this state for a period of one full year from January first to December thirty-first, shall be required, and any other employer, at the discretion of the tax commissioner may be required, to either make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in the state of North Dakota in such amount as is reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages, **but not to exceed five thousand dollars.**

SECTION 7. AMENDMENT. Section 57-38.1-04 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-04. Certain items - Allocation. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated, net of related expenses, as provided in sections 57-38.1-05 through 57-38.1-08.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 673

HOUSE BILL NO. 1150  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### **PARTNERSHIP SALE GAIN ALLOCATION**

AN ACT to create and enact a new subsection to section 57-38-12 and a new section to chapter 57-38.1 of the North Dakota Century Code, relating to the gain or loss on the sale of partnership interest when the partnership income or loss was previously determined to be nonbusiness income when taxing the income of a corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-12 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 2. A new section to chapter 57-38.1 of the North Dakota Century Code is created and enacted as follows:

Gain or loss on the sale of a partnership. Gain or loss on the sale of a partnership interest is allocable to this state in the ratio of the original cost of partnership tangible property in the state to the original cost of partnership tangible property everywhere, determined at the time of the sale. In the event that more than fifty percent of the value of the assets of the partnership consist of intangibles, gain or loss from the sale of the partnership interest is allocated to this state in accordance with the ratio of total North Dakota income to total income of the partnership for its first full tax period immediately preceding the tax period of the partnership during which the partnership interest was sold.

SECTION 3. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 1990.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 674

SENATE BILL NO. 2212  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### INCOME TAX ESTIMATES, RETURNS, AND REFUNDS

AN ACT to amend and reenact subsection 5 of section 57-38-34, subsections 1, 2, and 4 of section 57-38-42, sections 57-38-62, 57-38-63, and 57-38-64 of the North Dakota Century Code, relating to the requirements for information at the source tax returns, clarification of the requirements for the payment of estimated income tax, clarification of the requirements for the application for a quick refund of overpaid estimated tax by a corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-38-34 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The tax commissioner may grant a reasonable extension of time for filing a return when, in ~~his~~ the judgment of the tax commissioner, good cause exists.

SECTION 2. AMENDMENT. Subsections 1, 2, and 4 of section 57-38-42 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. ~~Every individual, partnership, corporation, joint stock company, or association, or insurance company Except for employers subject to sections 57-38-59 through 57-38-61, every person, a resident of, or having a place of business ownership of property with a situs in, or carrying on a trade or business in, this state, in whatever capacity acting, including lessees and mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the this state or of any state institution, or of any political subdivision within the this state, having control, receipt, custody, disposal, or making payment of interest, other than interest coupons payable to bearer, rent rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, for personal or professional services performed in this state, or other fixed or determinable annual or periodical gains, profits, and income, amounting to six hundred dollars or over in salaries or wages, and ten dollars or over of dividends or interest if an information return for such amount is also required to be filed for federal income tax purposes, and six hundred dollars or over in other payments mentioned in this chapter, paid during any the calendar year to any taxpayer, shall make a complete return thereof to the tax commissioner, under such regulations and in such the form and manner and to such extent as may be prescribed by the tax~~

commissioner. This subsection applies only if an information return for the same item is also required to be filed for federal income tax purposes. Except for those payments from which state income tax was withheld, interest, dividend, pension, and annuity payments are excluded from the reporting requirements of this subsection; provided, where any person has withheld state income tax from an interest, dividend, pension, or annuity payment, that person shall be deemed to be an employer for purposes of sections 57-38-59 through 57-38-61 and shall comply with the requirements of those sections. For purposes of this subsection, the tax commissioner is authorized to prescribe rules to specifically exclude items that are otherwise required to be reported under this subsection from the reporting requirements of this subsection if, in the tax commissioner's judgment, the reporting of the items does not contribute to the effective administration of the state's income tax laws.

2. Every partnership, having a place of carrying on a trade or business in this state, shall make a return, stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, name, address, social security number or federal identification number, whichever applies, and the amount of the distributive share of each individual partner.
4. Each information return required under subsection 1 and each must be deemed to be filed with the tax commissioner if the person required to make the return files with the tax commissioner a copy of the information return along with a copy of the transmittal form required to be filed with the internal revenue service. Each partnership return required under subsection 2 shall be signed and shall contain or be verified by a written declaration that it is made under the penalties of perjury.

SECTION 3. AMENDMENT. Section 57-38-62 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-62. Declaration Payment of estimated income tax.

1. All individuals, estates, and trusts An individual, estate, or trust that are is subject to section 6654 of the Internal Revenue Code relating to a taxpayer's failure to pay federal estimated income tax shall, at the time prescribed in this chapter, make a declaration of their pay estimated tax for the current taxable year. Married taxpayers individuals who file a joint federal estimate income tax return and are subject to section 6654 of the Internal Revenue Code shall each be deemed to be subject to the federal provision. If a declaration payment of estimated tax is required, the taxpayer individual, estate, or trust shall make, at the times time prescribed in this chapter, total estimated payments in an amount which is pay the lesser of the following:
  - a. An amount which, when added to the taxpayer's withholding, equals or exceeds ninety percent of the taxpayer's total current year taxable year's net tax liability. No interest or penalty provisions of this chapter shall apply if the total

amount of estimated tax due pursuant to this subdivision is less than two hundred dollars. The two hundred dollar floor shall apply per return.

- b. An amount which, when added to the taxpayer's withholding, equals or exceeds one hundred percent of the taxpayer's total net tax liability for the immediately preceding taxable year.
- (1) This provision is subdivision does not available for apply to any taxpayer who was a nonfiler or a part-year resident for not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a of this subsection if this part applies.
- (2) In order to satisfy the requirements of this subdivision, taxpayers married individuals who are required to file separate state returns for the current taxable year but filed who were required to file a North Dakota joint state return for the prior immediately preceding taxable year, shall each be required to pay estimated tax in an amount which, when added to the taxpayer's individual's withholding, is equal to equals the net tax liability which would have been incurred in computed for the immediately preceding taxable year if separate state returns had been required to be filed.
- (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year shall be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.
2. All corporate taxpayers A corporation shall, at the time prescribed in this chapter, make a declaration of their pay estimated tax for the current taxable year containing such information as the tax commissioner may prescribe by rules and regulations, if the taxpayer's corporation's estimated tax due the state from sources or business done in this state can reasonably be expected to exceed five thousand dollars and if their previous year's state income the corporation's net tax liability for the immediately preceding taxable year exceeded five thousand dollars. If payment of estimated tax is required, the corporation shall, at the time prescribed in this chapter, pay the lesser of the following:
- a. Ninety percent of the corporation's current taxable year's net tax liability.
- b. One hundred percent of the corporation's net tax liability for the immediately preceding taxable year.



3. The provisions of section 57-38-45 apply in case of failure to file or pay a declaration nonpayment, late payment, or underpayment of estimated tax as required by this chapter, or if a declaration of estimated tax for any quarter is understated or underpaid by more than ten percent. No penalty is due if the total amount of all payments for estimated tax made on or before the due date for that installment equals or exceeds the total amount that would have been required to be paid on or before that date if the estimated tax equaled the tax shown on the taxpayer's return for the preceding taxable year. For purposes of applying the penalty provisions of section 57-38-45, each of the due dates under section 57-38-63 are deemed to be a payment or return due date. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no penalty or interest is due if the underpayment of any installment comes within the exception provided in estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code of 1954 for recurring seasonal income. Notwithstanding the other provisions of this section, no penalty or interest is due if the estimated tax of an individual, estate, or trust is less than two hundred dollars per income tax return filed.
4. For purposes of this section, "estimated tax" means the amount that a person taxpayer estimates to be income tax under this chapter for the current taxable year less the amount of any credits allowable, including tax withheld.
5. For purposes of this section, "net tax liability" means the amount of income tax computed under this chapter for the current taxable year less the amount of any credits allowable except tax withheld and estimated tax paid.

SECTION 4. AMENDMENT. Section 57-38-63 of the North Dakota Century Code is amended and reenacted as follows:

57-38-63. Payment Due date for payment of estimated income tax. No later than April fifteenth of the taxable year the taxpayer shall file the declaration of estimated tax and make payment of A taxpayer shall pay no less than one-quarter of the amount of estimated tax due thereon with to the tax commissioner. If at this time a payment of at least one-quarter but less than the entire amount of tax due is made by the taxpayer the balance of the tax shall then be paid in three equal installments on the fifteenth days of the following months of on April fifteenth, June fifteenth, and September fifteenth of the taxable year, and January fifteenth of the following taxable year. Provided; provided, that a taxpayer having a taxable year other than a calendar year shall file a declaration of pay the estimated tax and remit payment of tax due on the fifteenth day of the fourth, sixth, and ninth month months of its the taxable year, and the fifteenth day of the first month of the following taxable year.

SECTION 5. AMENDMENT. Section 57-38-64 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-64. Amendment of declaration Application for quick refund of overpaid estimated tax by a corporation. Any person may amend a declaration of estimated income tax and make the adjusted payments of tax due thereon under the regulations of the tax commissioner. A corporation may, after the close of the taxable year and before the fifteenth day of the fourth month thereafter, file an application for an adjustment of an overpayment by it of estimated income tax for such the taxable year. Such a A claim for credit or refund must be verified and paid as are other claims against the state. No application under this section may be allowed unless the amount of the adjustment exceeds five hundred dollars and no. No interest may accrue or be paid thereon. Refunds will be payable for taxable years beginning after July 1, 1987 on any credit or refund allowed under this section as otherwise provided for under section 57-38-35.2.

SECTION 6. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 675

HOUSE BILL NO. 1461  
(Representatives Belter, Linderman)  
(Senators Moore, Dotzenrod)

### INCOMING TAX WITHHOLDING FOR AGRICULTURE

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to an exemption from filing of agricultural employers' returns and remittances under income tax withholding laws; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-60 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

An employer is not subject to this section or section 57-38-59 for wages paid to any employee solely for agricultural labor, as defined in section 3121(g) of the Internal Revenue Code [26 U.S.C. 3121(g)].

SECTION 2. EFFECTIVE DATE. This Act is effective for employers' returns and remittances due after June 30, 1991.

Approved April 10, 1991  
Filed April 12, 1991

## CHAPTER 676

HOUSE BILL NO. 1325  
(Representatives Kloubec, DeMers, Timm)  
(Senators Goetz, Nething, Satrom)

### NATURAL GAS SALES TAX RATE

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to the rate of sales taxes on sales of natural gas; to amend and reenact subsection 1 of section 57-39.2-02.1 of the North Dakota Century Code, relating to imposition of sales taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-02.1 of the 1990 Special Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
  - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
  - b. The furnishing or service of ~~gas~~, communication services, or steam other than steam used for processing agricultural products.
  - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.
  - d. Magazines and other periodicals.

- e. The leasing or renting of a hotel or motel room or tourist court accommodations.
- f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax rate on natural gas sales. Notwithstanding any other provisions of this chapter, the rate of the tax imposed under this chapter upon the gross receipts of retailers from all sales at retail of natural gas to retail consumers or users is four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 1992.

Filed April 12, 1991

NOTE: The Governor's veto of House Bill No. 1325 was not sustained.  
For the text of the Governor's veto message see chapter 734.

## CHAPTER 677

SENATE BILL NO. 2393  
(Heigaard)

### LODGING SALES TAX EXEMPTION

AN ACT to amend and reenact subsection 22 of section 57-39.2-04 of the North Dakota Century Code, relating to the sales tax exemption for hotel and motel rooms leased or rented for thirty or more consecutive days.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 22 of section 57-39.2-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22. Gross receipts from the leasing or renting of factory manufactured homes, including mobile homes, modular living units, or sectional homes, whether or not placed on a permanent foundation ~~or~~, for residential housing for periods of thirty or more consecutive days and the gross receipts from the leasing or renting of a hotel or motel room or tourist court accommodations occupied by the same person or persons for residential housing for periods of thirty or more consecutive days.

Approved March 14, 1991  
Filed March 15, 1991

**CHAPTER 678**

HOUSE BILL NO. 1308  
(Gorman)

**MEDICAL RESEARCH INSTITUTE EXEMPTION**

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases by a nonprofit medical research institute; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-39.2-04 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales made to a nonprofit medical research institute. For purposes of this subsection, "nonprofit medical research institute" means an institute that is a member of the association of independent research institutes, which is not a private foundation, and which is recognized by the internal revenue service as having exempt status under 26 U.S.C. 501(c)(3).

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 679

HOUSE BILL NO. 1606  
(Representatives Timm, Williams)  
(Senators Dotzenrod, Goetz)  
(Approved by the Committee on Delayed Bills)

### COAL FACILITY TAX EXEMPTIONS

AN ACT to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to sales tax exemptions and use tax rates; to amend and reenact subsections 2 and 3 of section 57-60-02 of the North Dakota Century Code, relating to exemption from the privilege tax on coal facilities during the first five years of production from a new electrical generating plant; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Reduced rate and exemption for power plant construction and production equipment.

1. As used in this section, unless the context otherwise requires:
  - a. "Operator" means any person owning, holding, or leasing a power plant.
  - b. "Power plant" means an electrical generating plant, together with all additions thereto, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
  - c. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
2. Sales of production equipment used exclusively in power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production equipment, which is used in the construction of new power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator



intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the five percent sales tax rate and apply to the commissioner for a refund.

5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 2. A new section to chapter 57-40.2 of the North Dakota Century Code is created and enacted as follows:

Reduced rate and exemption for power plant construction and production equipment.

1. As used in this section, unless the context otherwise requires:
  - a. "Operator" means any person owning, holding, or leasing a power plant.
  - b. "Power plant" means an electrical generating plant, together with all additions thereto, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
  - c. "Production equipment" means machinery and attachment units, other than replacement parts, directly and exclusively used in the generation, transmission, or distribution of electrical energy for sale by a power plant.
2. Sales of production equipment used exclusively in power plants that begin construction after June 30, 1991, are exempt from the tax imposed by this chapter.
3. Sales of tangible personal property, other than production equipment, which is used in the construction of new power plants are exempt from the tax imposed by this chapter.
4. To receive the reduced rate or exemption at the time of purchase, the operator must receive from the commissioner a certificate that the tangible personal property or production equipment the operator intends to purchase qualifies for the reduced rate or exemption. If a certificate is not received prior to the purchase, the operator shall pay the five percent sales tax rate and apply to the commissioner for a refund.
5. If the tangible personal property or production equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the operator may apply for a refund of the difference between the amount remitted by the contractor and the reduced rate or exemption imposed or allowed by this section.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 57-60-02 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. For electrical generating plants, the tax shall be at a rate of twenty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction after June 30, 1991, are exempt from sixty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining thirty-five percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.
3. For electrical generating plants, in addition to the tax imposed by subsection 2, there shall be a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production from the plant.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 680

HOUSE BILL NO. 1048  
(Legislative Council)  
(Interim Jobs Development Commission)

### MANUFACTURING MACHINERY SALES TAX EXEMPTION

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales and use tax exemption for new manufacturing machinery and equipment purchases; and to repeal sections 57-39.2-03.5 and 57-40.2-03.4 of the North Dakota Century Code, relating to reduced sales and use tax rates for purchases of new manufacturing machinery and equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales tax exemption for manufacturing machinery and equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.
2. To qualify for exemption at the time of purchase, the manufacturer must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer must pay the tax and apply to the commissioner for a refund.
3. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer must apply for a refund of the amount remitted by the contractor.
4. For purposes of this section, the following definitions apply:
  - a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured.
  - b. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
  - c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. The term includes electrical,

mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result.

- d. "Machinery" and "equipment" do not include handtools, buildings, or transportation equipment not directly used in manufacturing; office machines and equipment; machines and equipment used in administrative, accounting, sales, or other segments of the business; any property that becomes a part of the manufactured product; or any other equipment or machinery not used directly and solely in manufacturing.
- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
- f. "Used directly" means used solely in the actual production during processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
  - (1) To effect a direct and immediate physical change upon the tangible personal property.
  - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
  - (3) To test or measure the property on the production line or at a site in the immediate location of production.
  - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
  - (5) To package the product for sale and shipment.

SECTION 2. REPEAL. Sections 57-39.2-03.5 and 57-40.2-03.4 of the 1989 Supplement to the North Dakota Century Code are repealed.

Approved April 16, 1991  
Filed April 18, 1991

## CHAPTER 681

SENATE BILL NO. 2098  
(Committee on Finance and Taxation)  
(At the request of the Office of Management and Budget)

## SALES TAX RETURNS FOR MAY

AN ACT to amend and reenact subsection 1 of section 57-39.2-12 and subsection 7 of section 57-40.2-07 of the North Dakota Century Code, relating to making the references to due dates for May monthly sales and use tax returns permanent in each odd-numbered year; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month, except tax collected during May ~~1989~~ in each odd-numbered year is payable on or before the twenty-second day of June ~~1989~~ of that year. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to ~~such taxes~~ the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer shall return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax shall become due immediately prior to the sale or discontinuance of ~~such~~ the business and if not paid within fifteen days thereafter it shall become delinquent and subject to the penalties provided in section 57-39.2-18.

SECTION 2. AMENDMENT. Subsection 7 of section 57-40.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter shall be payable monthly on or before the last day of the next succeeding month, except for taxes collected during May ~~1987~~ of each odd-numbered

year, which are payable on or before the twenty-second day of June ~~1987~~ of that year. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty shall be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed shall be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement shall apply separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, ~~such~~ a person may return to quarterly installments.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 682

SENATE BILL NO. 2330  
(Senator Marks)  
(Representatives Kroeber, Trautman)

### CAPITAL CONSTRUCTION FUND ALLOCATION DATE

AN ACT to amend and reenact section 7 of chapter 644 of the 1989 Session Laws of North Dakota, relating to the effective date for the allocation of sales, use, and motor vehicle excise tax revenues to the capital construction fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 7 of chapter 644 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 7. EFFECTIVE DATE. Section 1 of this Act is effective for sales, use, and motor vehicle excise tax collections ~~from taxable events occurring~~ received by the state tax commissioner after June 30, 1991.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 683

HOUSE BILL NO. 1116  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### MOTOR CARRIER EXCISE TAX EXEMPTION

AN ACT to amend and reenact subsection 3 of section 57-40.3-04 of the North Dakota Century Code, relating to exemption of motor carrier vehicles from motor vehicle excise tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their ~~revenue from interstate hauling bears to their total revenue for the preceding operating year~~ fleet miles outside North Dakota bear to their total fleet miles. For the purposes of this subsection, "fleet miles" means those miles reported in accordance with the international registration plan and must coincide with the mileage reporting period required by the plan. For the purposes of this subsection, "motor carrier vehicles" means any vehicles used upon public streets or highways for the purpose of transporting persons or property for commercial purposes.

Approved April 5, 1991

Filed April 8, 1991



## CHAPTER 684

HOUSE BILL NO. 1238  
(Wald)

### TRANSFER OF MOTOR VEHICLE TO TRUST

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to an exemption from the motor vehicle excise tax for certain transfers of motor vehicles into trust; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Motor vehicles acquired by inheritance from, ~~or~~ by bequest of, or operation of a trust created by a decedent who owned it; the transfer of a motor ~~vehicles which were~~ vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more ~~of the~~ joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; the transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; and the transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization but the ownership of which business organization remains in the same person or persons as prior to the reorganization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1991.

Approved March 8, 1991  
Filed March 8, 1991

**CHAPTER 685**

HOUSE BILL NO. 1395  
(Representatives D. Olsen, A. Olson, Shide)  
(Senators Mutch, David)

**NONPROFIT CORPORATION MOTOR VEHICLE EXCISE  
TAX EXEMPTION**

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for motor vehicles acquired by nonprofit corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.3-04 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Motor vehicles acquired through purchase or gift by any nonprofit county and local historical societies that are exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 686

SENATE BILL NO. 2238  
(Committee on State and Federal Government)  
(At the request of the Director of Institutions)

### EMERGENCY SERVICE COMMUNICATIONS

AN ACT to create and enact a new section to chapter 57-40.6 and a new subsection to section 57-40.6-02 of the North Dakota Century Code, relating to enhanced 911 data base management charges and authority of counties or cities to impose excise taxes on telephone access lines; to amend and reenact section 57-40.6-01 and subsection 1 of section 57-40.6-02 of the North Dakota Century Code, relating to the definitions of the emergency service communications systems and the authority of counties or cities to impose excise tax on telephone access lines, and to amend and reenact subsection 1 of section 1 and section 3 of chapter 720 of the 1987 Session Laws of North Dakota, relating to the appointment of an emergency services communication system advisory committee and the expiration date of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, or emergency 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. "Telephone access line" means the telephone service line that connects a subscriber's main telephone or equivalent main telephone to the telephone company's switching office principal access to the telephone company's switched network including an outward dialed trunk or access register.

\* SECTION 2. AMENDMENT. Subsection 1 of section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than one year two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for

\* NOTE: Subsection 1 of section 57-40.6-02 was also amended by section 1 of Senate Bill No. 2422, chapter 687.

submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed fifty cents per month per telephone access line.

SECTION 3. A new subsection to section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

SECTION 4. AMENDMENT. Subsection 1 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota is amended and reenacted as follows:

1. The governor shall appoint a nine member an eleven-member emergency services communication system advisory committee for 911 telephone systems. For purposes of this section, "emergency services communications system" has the same meaning as that term is defined in section 57-40.6-01. The governor shall include, on the advisory committee, one representative from the rural telephone companies, one representative from the commercial telephone companies, one representative from the North Dakota league of cities, one representative from the association of counties, one representative from the office of management and budget, one representative from the North Dakota peace officers association, one representative from the fire chiefs association, one representative from the department of human services, and one representative from the state radio communications' office, one representative from the health department, one county 911 coordinator, and one emergency medical technician. Members' terms shall be for three years and subject to reappointment. The committee shall name a chairman and a vice chairman from its membership, and the state radio communications' office shall provide staff services to the advisory committee. Advisory committee members are entitled to travel expense reimbursement from the state radio communications office. Reimbursement shall be at the same rates and in the same manner as provided for state employees.

SECTION 5. A new section to chapter 57-40.6 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Enhanced 911 data base management charges. Any telephone company charges for enhanced 911 data base management must be on a per telephone access line basis.

SECTION 6. AMENDMENT. Section 3 of chapter 720 of the 1987 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, ~~1994~~ 1994, and after that date is ineffective.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 687

SENATE BILL NO. 2422  
(Senators Kelly, Lindgren)  
(Representatives Flaagan, Larson)

### TELEPHONE ACCESS LINE TAX

AN ACT to amend and reenact subsection 1 of section 57-40.6-02 of the North Dakota Century Code, relating to the excise tax that counties or cities may impose on telephone access lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsection 1 of section 57-40.6-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than ~~one year~~ two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed ~~fifty cents~~ one dollar per month per telephone access line.

Approved April 11, 1991  
Filed April 12, 1991

- \* NOTE: Subsection 1 of section 57-40.6-02 was also amended by section 2 of Senate Bill No. 2238, chapter 686.

## CHAPTER 688

HOUSE BILL NO. 1117  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

### FUELS TAX ADMINISTRATION

AN ACT to amend and reenact subsection 4 of section 57-43.1-01, sections 57-43.1-03 and 57-43.1-06, subsection 3 of section 57-43.1-14, subsection 2 of section 57-43.1-17, section 57-43.1-27, subsection 6 of section 57-43.2-01, sections 57-43.2-03, 57-43.2-05, and 57-43.2-07, subsection 2 of section 57-43.2-14, and section 57-43.2-25 of the North Dakota Century Code, relating to the definition of importer for use, the refund of special fuel or motor fuel tax, motor fuel dealer's bond, the collection of motor fuel tax, the sale of motor vehicle fuel to retail outlets, and the special fuel wholesaler's or dealer's license and bond; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-43.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms]. gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. ~~Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.~~

SECTION 2. AMENDMENT. Section 57-43.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03. Refund of tax for fuel used for industrial purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel as defined in ~~subsection 4~~ of section 57-43.1-01 for industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, must be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the

commissioner of a claim for refund. The amount of the tax refund provided for in this section must be reduced by one-half cent per gallon [3.79 liters], except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 must be charged one-half cent per gallon [3.79 liters] by the dealer and the one-half cent charge must be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 3. AMENDMENT. Section 57-43.1-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agricultural fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. ~~The refund of tax paid pursuant to this chapter must be reduced by the amounts provided in sections 57-43.1-03 and 57-43.1-03.1, and the reduction shall be deposited in the agricultural fuel tax fund.~~ The refund may be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 may not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 4. AMENDMENT. Subsection 3 of section 57-43.1-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. ~~The commissioner may require a dealer, as a condition precedent to the issuance of a license, to a dealer shall furnish a bond in an amount set by the commissioner, but not less than one thousand dollars, guaranteeing the payment of the motor vehicle fuel tax collected by the dealer of not less than one thousand dollars. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a dealer has had a valid license for three or more years, the commissioner may review the records of the dealer and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner.~~

SECTION 5. AMENDMENT. Subsection 2 of section 57-43.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~If a dealer omits from a statement a properly includable gallonage amount which is in excess of it is determined upon audit that the tax due was twenty-five percent of the amount of gallonage stated in the or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the statement, or six years after the statement was filed, whichever period expires later.~~



SECTION 6. AMENDMENT. Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail ~~dealers in motor vehicle fuels outlets~~ - Tax imposed - Credit for losses. When a wholesale dealer in motor vehicle fuels makes a sale to a retail ~~dealer outlet~~ the wholesale dealer shall credit the retail ~~dealer outlet~~ with one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the ~~retailer's retail outlet's~~ cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the dealer shall deduct the total credit allowance granted on sales to retail ~~dealers outlets~~ in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

SECTION 7. AMENDMENT. Subsection 6 of section 57-43.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. **Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.**

SECTION 8. AMENDMENT. Section 57-43.2-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Tax levied. A special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state

or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due. ~~The provisions for credit in this section apply only if the other state or its political subdivisions allow a credit with respect to the tax imposed by this section which is substantially similar in effect to the credit provided in this section.~~

SECTION 9. AMENDMENT. Section 57-43.2-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-05. Special fuel wholesaler's or dealer's license required. No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license must be made to the commissioner and a separate license is required for each separate place of business or location where special fuels are regularly sold, delivered, or placed into the tanks of bulk supply vehicles for delivery into supply tanks of special fuel users. The application must be filed upon a form prepared and furnished by the commissioner and must contain such information as the commissioner requires.

SECTION 10. AMENDMENT. Section 57-43.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-07. Special fuel wholesaler's or dealer's bond.

1. ~~Except as provided in this section, no special fuel wholesaler's or dealer's license may be issued to any person or continued in force unless the person has furnished a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, to secure his compliance with this chapter and the payment of all taxes, interest, and penalties due or to become due. As a condition precedent to the issuance of a license, a wholesaler or dealer shall furnish a bond in an amount set by the commissioner, but not less than five hundred dollars, guaranteeing the payment of the special fuels tax collected by the wholesaler or dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a wholesaler or dealer has had a valid license for three or more years, the commissioner may review the wholesaler's or dealer's records and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner.~~
2. ~~The commissioner may waive the filing of a bond if, upon investigation, it is found that the bond may be waived without impairing or jeopardizing the revenue collections of this state, or in lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, by the person depositing moneys with the tax~~

commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person.

SECTION 11. AMENDMENT. Subsection 2 of section 57-43.2-14 of the North Dakota Century Code is amended and reenacted as follows:

2. If a special fuel dealer omits from a return a properly includable gallage amount which is in excess of it is determined upon audit that the tax due was twenty-five percent of the amount of gallage stated in the or more above the amount reported on a return, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.

SECTION 12. AMENDMENT. Section 57-43.2-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-25. Liquefied petroleum gas dealers - License - Fee - Permits - Bond. It is unlawful for any person to act as a wholesale dealer in special fuel known as liquefied petroleum gas in this state unless the person is a holder of an uncanceled special liquefied petroleum gas dealer's license issued to that person by the commissioner, in addition to complying with all other provisions of this chapter. Application for the license must be made to the commissioner and a separate license is required for each separate place of business or location where liquefied petroleum gas is regularly sold, delivered, or placed into tanks of bulk supply vehicles for delivery into supply tanks of retail liquefied petroleum gas dealers or users. The cost of this license is twenty dollars, which amount must accompany each application, upon a form prepared and furnished by the commissioner. The application must contain the information the commissioner deems necessary, together with a surety bond in the form and amount as the commissioner requires, but not less than five hundred dollars, except that the commissioner may waive the filing of a bond if the commissioner finds such bond may be waived without impairing or jeopardizing the revenue collections of this state or other security as provided under section 57-43.2-07.

If any person deals only in the retail selling of liquefied petroleum gas, the provisions of sections 57-43.2-06 and 57-43.2-11 do apply, but in lieu of those provisions each liquefied petroleum gas retail dealer is required to apply to the commissioner for a liquefied petroleum gas retail dealer's permit. The cost of a permit issued by the commissioner is twenty dollars. Each liquefied petroleum gas retail dealer shall collect the special fuels excise tax levied under section 57-43.2-03, and shall transmit quarterly all taxes collected to the commissioner. The commissioner shall furnish report forms requiring the information the commissioner deems necessary for the efficient administration of this section. The report must

accompany the transmittal of all taxes collected by liquefied petroleum gas retail dealers.

SECTION 13. EFFECTIVE DATE. Section 8 of this Act is effective for taxable events occurring after December 31, 1990.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 689

HOUSE BILL NO. 1098  
(Committee on Finance and Taxation)  
(At the request of the Tax Commissioner)

**OIL AND GAS VALUATION FOR TAXATION**

AN ACT to create and enact sections 57-51-02.2 and 57-51-02.3 of the North Dakota Century Code, relating to gross production tax on gas and oil; to amend and reenact sections 57-51-01, 57-51-02, 57-51-05, and subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code and to amend and reenact section 1 of chapter 733 of the 1989 Session Laws of North Dakota, relating to imposition of gross production tax and the apportionment and use of the gross production tax; to repeal section 57-51-18 of the North Dakota Century Code, relating to payment where ownership is in dispute; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-51-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51-01. Definitions. As used in this chapter:

1. "Barrel of oil" ~~shall mean~~ means forty-two United States gallons of two hundred thirty-one cubic inches per gallon computed at a temperature of sixty degrees Fahrenheit [158.99 liters computed at a temperature of 15.56 degrees Celsius].
2. "Commissioner" ~~shall mean~~ means the state tax commissioner.
3. "Field" means the geographic area underlaid by one or more pools, as defined by the industrial commission.
4. "Gas" ~~shall mean~~ means natural gas and casinghead gas.
- ~~4.~~ 5. "Oil" ~~shall mean~~ means petroleum, crude oil, mineral oil, and casinghead gasoline.
- ~~5.~~ 6. "Person" ~~shall include~~ includes partnership, corporation, association, fiduciary, trustee, and any combination of individuals.
7. "Posted price" means the price specified in publicly available posted price bulletins or other public notices, net of any adjustments for quality and location.
8. "Transportation costs" means the costs incurred for transporting oil established in accordance with the first applicable of the following methods:

- a. Actual costs incurred under the arm's-length contract between the producer and the transporter of oil.
- b. An applicable common carrier rate established and filed with the North Dakota public service commission, or the appropriate federal jurisdictional agency.
- c. Where no common carrier rate would be applicable, the transportation costs are those reasonable costs associated with the actual operating and maintenance expenses, overhead costs directly attributable and allocable to the operation and maintenance, and either depreciation and a return on undepreciated capital investment, or a cost equal to a return on the investment in the transportation system, as determined by the commissioner.

SECTION 2. AMENDMENT. Section 57-51-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02. Gross production tax - Oil. A tax of five per centum of the gross value at the well is ~~hereby~~ levied upon all oil ~~and gas~~ produced within the state of North Dakota, less the value of any part thereof, the ownership or right to which is exempt from taxation. The tax ~~hereby~~ levied shall attach to ~~and is hereby levied upon~~ the whole production, including ~~what is commonly known as~~ the royalty interest.

SECTION 3. Section 57-51-02.2 of the North Dakota Century Code is created and enacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota less any part thereof, the ownership or right to which is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. For fiscal year beginning July 1, 1991, the gas tax rate is four cents; for fiscal years beginning July 1, 1992, and subsequent years, the gas tax rate is four cents times the gas base rate adjustment for the fiscal year as calculated pursuant to subsection 2.
2.
  - a. On or before May 15, 1992, and annually thereafter, the tax department shall determine the gas base rate adjustment and the resulting gas tax rate for the fiscal year beginning on the following July first.
  - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths
  - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed

on or before June first. In addition, the tax department shall publish the adjustment as a rule in the North Dakota Administrative Code.

- d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
- e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 4. Section 57-51-02.3 of the North Dakota Century Code is created and enacted as follows:

57-51-02.3. Valuation of oil - Alternatives - Exceptions. The gross value at the well for oil is the price paid for the oil under an arm's-length contract between the producer and the purchaser less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale under the contract. In the absence of an arm's-length contract, the gross value at the well for oil is established by the first applicable of the following methods:

1. The price paid under an arm's-length contract, to which the person paying the tax is a party, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
2. The price paid under an arm's-length contract, between parties other than the person paying the tax, for the purchase or sale of oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, transportation costs associated with moving the oil from the point of production to the point of sale.
3. The value determined by consideration of the posted price relevant in valuing oil of like kind, character, and quality, in the same field or, if none, in a nearby field, less, where applicable, adjustments for transportation costs to reflect the differential between the value at the point of production and the value at the location reflected in the posted price.

SECTION 5. AMENDMENT. Section 57-51-05 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51-05. Payment of tax on quarterly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

1. The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production.

The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when such a request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.

2. On oil or gas sold at the time of production, the gross production tax thereon shall be paid by the purchaser, and such purchaser shall and is hereby authorized to deduct in making settlement with the producer or royalty owner, the amount of tax so paid; provided, that in the event oil on which such gross production tax becomes due is not sold at the time of production but is retained by the producer, the tax on such oil not so sold shall be paid by the producer for himself including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner such producer shall have the right to deduct the amount of such tax so paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time such tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, shall be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.
- 4- ~~In case oil or gas is sold under circumstances where the sale price does not represent the cash price thereof prevailing for oil or gas of like kind, character or quality in the field from which such product is produced, the commissioner may require the said tax to be paid upon the basis of the prevailing price then being paid at the time of production thereof in said field for oil, or gas of like kind, quality, and character.~~

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 57-51-06 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for ~~shall~~ must be paid to the commissioner and the person paying the tax shall file with said the commissioner at the time the tax is required to be paid, a statement, under oath, on forms prescribed by said the commissioner, giving with other information required, the following:



- a. Full description of the property by lease name, subdivision of quarter section, section, township and range, from which said oil or gas was produced.
  - b. The name of the producer.
  - c. The gross amount of said oil or gas purchased.
  - d. The total value of such oil or gas at the price paid therefor, if purchased at time of production.
  - e. The prevailing market price of oil or gas sold at time of production, provided, that in lieu of such statement, a purchaser, at time of production, may furnish a true verified copy of the regular settlement sheet in use by such purchaser, if such sheet contains all the information required.
2. Any person engaged in the production within this state of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement under oath upon forms prescribed by said the commissioner, giving, along with other information required, the following:
- a. Name of the property, description by subdivision of quarter section, section, township, and range.
  - b. The gross amount of oil or gas produced and saved.
  - c. The name of the purchaser and the price received therefor.
  - d. Each report required hereunder shall be filed on separate forms as to product and county.

SECTION 7. AMENDMENT. Section 1 of chapter 733 of the 1989 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. First an amount the tax revenue collected under this chapter equal to one percent of the gross value at the well of the oil and gas upon which a tax is collected under this chapter one-fifth of the tax on gas must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 8. REPEAL. Section 57-51-18 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1991.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 690

SENATE BILL NO. 2279  
(Senators Streibel, Ingstad, Naaden)  
(Representatives Byerly, Wardner)

### OIL EXTRACTION TAX TRIGGER

AN ACT to amend and reenact subsections 4 and 5 of section 38-08-04, sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to definitions for purposes of the oil extraction tax, conditions affecting the rate of the oil extraction tax, and conditions affecting exemptions to the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 38-08-04 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter, to classify and determine the status and depth of wells that are stripper well property as defined in subsection 8 of section 57-51.1-01, to certify to the tax commissioner which wells are stripper wells and the depth of those wells, and to certify to the tax commissioner which wells involve secondary or tertiary recovery operations under section 57-51.1-01, and the date of qualification for the reduced rate of oil extraction tax for secondary and tertiary recovery operations.
5. To adopt and to enforce rules and orders to effectuate the purposes and the intent of this chapter and of subsections 1, 4, 5, 6, and 8 of section 57-51.1-01.

\* SECTION 2. AMENDMENT. Section 57-51.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.

\* NOTE: Section 57-51.1-01 was also amended by section 1 of House Bill No. 1414, chapter 691.

2. "Average price" of a barrel of crude oil means the average daily price for a barrel of west Texas intermediate cushing crude oil, as those prices appear in the Wall Street Journal, midwest edition, **for the period June first through October thirty first of any year.**
3. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
4. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission, the project must have been unitized after April 27, 1987, and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
  - a. Miscible fluid displacement.
  - b. Steam drive injection.
  - c. Microemulsion.
  - d. In situ combustion.
  - e. Polymer augmented water flooding.
  - f. Cyclic steam injection.
  - g. Alkaline flooding.
  - h. Carbonated water flooding.
  - i. Immiscible carbon dioxide displacement.
  - j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under

section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations.

7. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
8. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet or less, fifteen barrels per day for wells of a depth of more than six thousand feet but not more than ten thousand feet, and twenty barrels per day for wells of a depth of more than ten thousand feet during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

\* SECTION 3. AMENDMENT. Section 57-51.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted: for any consecutive five-month period in any year is thirty-three dollars or more, then the rate of tax for the following months on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted. However, if after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year, the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project.

\*\* SECTION 4. AMENDMENT. Section 57-51.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 57-51.1-02 was also amended by section 2 of House Bill No. 1414, chapter 691.

\*\* NOTE: Section 57-51.1-03 was also amended by section 3 of House Bill No. 1414, chapter 691.

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil ~~between June first and October thirty first of any year is thirty three dollars or more~~ for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil ~~between June first and October thirty first of any year is thirty three dollars or more~~ for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 691

HOUSE BILL NO. 1414  
(Representatives Timm, R. Anderson, Hokana)  
(Senators Kinnoin, Vosper, O'Connell)

### TAXATION OF ENHANCED OIL RECOVERY

AN ACT to amend and reenact subsections 5 and 6 of section 57-51.1-01 and sections 57-51.1-02 and 57-51.1-03 of the North Dakota Century Code, relating to an exemption from the oil extraction tax for production from secondary or tertiary recovery projects; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subsections 5 and 6 of section 57-51.1-01 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission; ~~the project must have been unitized after April 27, 1987,~~ and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.
6. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
  - a. Miscible fluid displacement.
  - b. Steam drive injection.
  - c. Microemulsion.
  - d. In situ combustion.
  - e. Polymer augmented water flooding.
  - f. Cyclic steam injection.

\* NOTE: Section 57-51.1-01 was also amended by section 2 of Senate Bill No. 2279, chapter 690.

- g. Alkaline flooding.
- h. Carbonated water flooding.
- i. Immiscible carbon dioxide displacement.
- j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

\* SECTION 2. AMENDMENT. Section 57-51.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted shall be deemed for the purposes of this chapter to be engaged in the activity of extracting that oil. The rate of tax shall be six and one-half percent of the gross value at the well of the oil extracted, except that for oil produced from wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991, for oil that does not qualify as incremental oil but is produced from a qualifying secondary or tertiary recovery project or for a that is certified as qualifying by the industrial commission after June 30, 1991, and for incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03, the rate of tax shall be four percent of the gross value at the well of the oil extracted. However, if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more then the rate of tax for the following calendar year on all taxable wells is six and one-half percent of the gross value at the well of the oil extracted.

\*\* SECTION 3. AMENDMENT. Section 57-51.1-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 57-51.1-02 was also amended by section 3 of Senate Bill No. 2279, chapter 690.

\*\* NOTE: Section 57-51.1-03 was also amended by section 4 of Senate Bill No. 2279, chapter 690.

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.
4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.
5.
  - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission during the period beginning July 1, 1991, and ending June 30, 1995, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
  - b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.
  - c. For purposes of this subsection, incremental production is defined in the following manner:



- (1) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (2) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a of this subsection and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms

- to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.
- (5) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (6) For purposes of determining the exemption provided for in subdivision b of this subsection and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used

by the commission at the time the tertiary recovery project is certified.

- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c of this subsection.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1991.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 692

HOUSE BILL NO. 1200  
 (Committee on Finance and Taxation)  
 (At the request of the State Board of Equalization)

### FOREST STEWARDSHIP TAX

AN ACT to create and enact a new section to chapter 57-57 of the North Dakota Century Code, relating to forest stewardship recognition; to amend and reenact sections 57-57-01, 57-57-02, 57-57-03, 57-57-04, 57-57-05, 57-57-06, 57-57-07, 57-57-08, 57-57-09, and 57-57-10 of the North Dakota Century Code, relating to changing the name of the native woodland tax to the forest stewardship tax, describing property that may qualify for the forest stewardship tax, setting the rate and manner of collection of the tax, describing the duties of the state forester and board of county commissioners, and providing for hearings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-57-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-57-01. Definitions. As used in this chapter, unless the context or subject matter otherwise ~~clearly~~ requires:

1. "County designee" means a person or agent under the control of local or state governmental entities who is willing and able to cooperate with the state forester as provided in this chapter.
2. "Forest" means an area of land normally supporting a growth of planted tree cover, woodlands, or windbreaks.
3. "Forest stewardship" means the application of environmental and economic resource management principles to benefit current and future landowners, the public, and the forest resource.
4. "State forester" means the state forester appointed under section 4-19-01 and, where reasonable, the agents and personnel under the state forester's control.
- 2: ~~"Woodland" means an area of land normally supporting a growth of natural or planted forest cover.~~

SECTION 2. AMENDMENT. Section 57-57-02 of the North Dakota Century Code is amended and reenacted as follows:

57-57-02. Eligibility to be taxed for forest stewardship tax - Application. Beginning January 1, 1974, the This chapter applies in any county in which the county commission has approved by resolution the application of this chapter to all qualifying property within the county.

The owner or his agent of the owner, having any tract of contiguous woodland forest which consists of:

1. Natural forest cover ten acres [4.05 hectares] or larger in size;
2. Planted forest cover five acres [2.02 hectares] or larger in size and not less than sixty feet [18.29 meters] in width; or
3. Any combination of natural and planted forest cover ten acres [4.05 hectares] or larger in size,

may file an application with the state forester county commission of the county in which the property is located setting forth a description of property which he that the owner desires to place under the woodland forest stewardship tax and on which land he the owner will practice forestry. If the county commission has approved application of this chapter within the county, the county commission shall forward each application received to the state forester for a determination of whether the property qualifies under this chapter. The state forester shall prescribe the form of such for application blanks and make them available to all interested persons desiring to subject woodlands owned by them to the provisions of this chapter.

SECTION 3. AMENDMENT. Section 57-57-03 of the North Dakota Century Code is amended and reenacted as follows:

57-57-03. Duties of the state forester. Upon the filing receipt of the application provided for in section 57-57-02, the state forester shall examine the land and if he finds that the woodland will produce a forest cover, the state forester shall enter an order approving the application report to the county commission whether the property qualifies for taxation under this chapter. A copy of such order shall the state forester's report must be forwarded to the owner or his the agent of the owner, to the local assessor of any township or district wherein in which the land is located, to the clerk of the township if the township is organized, and to the county auditor. The state forester may appoint a local county designee to assist in the performance of the duties of the state forester under this chapter.

SECTION 4. AMENDMENT. Section 57-57-04 of the North Dakota Century Code is amended and reenacted as follows:

57-57-04. Application and order acceptance to constitute a contract. The application of the owner or his agent of the owner and the filing acceptance of the order application by the state forester shall constitute board of county commissioners constitutes a contract, running with the land, for a period of five years, unless terminated as provided in this chapter. Any order issued on or before March February first of any year shall take effect in such that year, but all orders issued after March February first of any year shall take effect the following year. If at the end of five years the contract is not renewed by mutual consent of the owner or agent of the owner and the board of county commissioners, the land shall be is declassified and shall be removed from the provisions of this chapter.

SECTION 5. AMENDMENT. Section 57-57-05 of the North Dakota Century Code is amended and reenacted as follows:

57-57-05. Duty of local assessor. The local assessor in preparing the tax roll shall show the acreage [hectarage] for each owner covered by the

provisions of this chapter in a column designated by the words "Woodland Forest Tax Law" or the initials "W-F-L F.T.L.".

SECTION 6. AMENDMENT. Section 57-57-06 of the North Dakota Century Code is amended and reenacted as follows:

57-57-06. Liability, rate, and collection of the tax - Lieu tax. The owner shall be ~~liable and shall~~ pay to the county treasurer at the same time taxes on other real property are due, a forest stewardship tax computed at a rate ~~determined to be equitable by the county commissioners and the state forester on the land approved for entry under this chapter of fifty cents per acre.~~ The tax shall be a part of the total real property taxes on the land of the owner and subject to collection in the same manner as any other real property taxes. The payment of the taxes herein imposed shall be taxes under this chapter is in lieu of all ad valorem taxes by the state, counties, towns, townships, school districts, and other municipalities upon any property rights attached to such woodlands the forest. It is expressly provided that the woodland forest stewardship tax shall not be is not in lieu of income taxes nor excise taxes upon the sale of forest products or services that may be derived from such woodlands the forest. It is expressly provided that the woodland tax rate shall not exceed the rate as determined by the state and county levy. The county commissioners and the state forester may meet to consider the woodland tax rate at any time deemed suitable or necessary by both parties.

SECTION 7. AMENDMENT. Section 57-57-07 of the North Dakota Century Code is amended and reenacted as follows:

57-57-07. Destructive practices prohibited - Declassification - Management and assistance of the state forester. If woodlands are a forest is cleared, grazed, burned, cut, or otherwise dealt with in a destructive manner as determined by the state forester, they it may be subject to declassification and return to the regular tax rolls. At the request of the owner or his the agent of the owner, the state forester or the county designee of the state forester may assist in preparing and carrying out a forest management plan for the orderly development of these woodlands each forest. The plan must cover a five-year period and must recognize the individual management objectives of the landowner. The plan must contain written recommendations for managing timber and other associated forest resources. Approval and implementation of the forest management plan must be by mutual consent of the landowner and the state forester.

SECTION 8. AMENDMENT. Section 57-57-08 of the North Dakota Century Code is amended and reenacted as follows:

57-57-08. Report of the state forester - Declassification orders. The state forester shall make an annual written report as to the forest practices of each woodland forest owner or his the agent of the owner covering lands enrolled under this chapter. The report may be based on spot field inspections, landowner questionnaires, or documented observations from local assessors. The report must list the landowners, legal descriptions, and acreages which are eligible to receive continued tax benefits. A copy of the report must be forwarded to the county auditor by March first of each year. If the state forester finds that the owner or his the agent of the owner has not complied with the law, or if the land is no longer used for forestry purposes, he the state forester shall issue an order removing the land from the woodland forest stewardship tax law classification. Any declassification

order issued on or before ~~March~~ February first of any year ~~shall take~~ takes effect in ~~such~~ that year. A copy of the declassification order ~~shall must~~ be sent to the owner or ~~his~~ the agent of the owner, to the local assessor of the township or district ~~wherein in which~~ in which the land is located, to the clerk of the township if the township is organized, and to the county auditor. Any order issued under this section ~~shall be~~ is final unless set aside pursuant to the provisions of section 57-57-09.

SECTION 9. AMENDMENT. Section 57-57-09 of the North Dakota Century Code is amended and reenacted as follows:

57-57-09. Public hearing by petition - Hearing board - Presiding officer. The owner or ~~his~~ the agent of the owner, board of township supervisors, or board of county commissioners may petition the state forester for a public hearing to take testimony and hear evidence on whether lands shall be entered or continued under this chapter. Upon filing of ~~such the~~ the petition, the state forester shall set ~~such the~~ the matter for public hearing at ~~such a~~ a time as ~~he~~ the state forester sees fit in the county ~~wherein in which~~ in which the land is located, but not later than ninety days from the date of the filing of the petition. The state forester, the county auditor, and the local assessor of the township ~~wherein in which~~ in which the lands are located ~~shall~~ constitute the hearing board. The state forester ~~shall be~~ is the presiding officer of the hearing and shall give thirty days' written notice of the hearing to the owner or ~~his~~ the agent of the owner, board of township supervisors, and the board of county commissioners. ~~Such~~ The hearing may be deferred not more than sixty days after notice to the parties involved.

SECTION 10. AMENDMENT. Section 57-57-10 of the North Dakota Century Code is amended and reenacted as follows:

57-57-10. Procedural rules for hearing - Decision - Appeal. A written record ~~shall must~~ be made of all testimony offered at any hearing before the hearing board. A transcript of the testimony taken by or before the hearing board ~~shall must~~ be furnished to any party upon written request ~~therefor~~. After hearing ~~all~~ the testimony and after making ~~such any~~ any independent investigations ~~as they deem it deems~~ as it deems necessary, the hearing board shall make ~~their~~ its findings of fact and the decision of the majority will rule. The state forester as the presiding officer of the hearing board ~~will shall~~ make and enter this order accordingly within thirty days after the final adjournment of the hearing. An appeal may be taken to the district court of the county ~~wherein in which~~ in which the land in question is located within thirty days after notice ~~thereof~~ thereof is given to each of the parties to the proceeding. Only final orders or decisions substantially affecting the rights of parties ~~shall be~~ are appealable. A procedural order made by the state forester or the hearing board during the hearing ~~shall is~~ is not be deemed a final order nor an order affecting a substantial right. ~~Such~~ An appeal ~~shall may~~ may be taken pursuant to the provisions of section 28-32-15. An appeal from a determination or decision of the hearing board ~~shall does~~ does not stay the enforcement of ~~such the~~ the determination or decision unless the court to which the appeal is taken, upon application and after a hearing, ~~shall order~~ orders a stay. The court may impose such terms and conditions for a stay of the enforcement of the determination or decision appealed as it ~~shall deem~~ deems proper.

SECTION 11. A new section to chapter 57-57 of the North Dakota Century Code is created and enacted as follows:

Forest stewardship recognition. Recognition is appropriate for landowners and organizations demonstrating special forest stewardship efforts. The state forester may establish stewardship requirements, standards, and awards for such a recognition program.

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1990.

Approved April 16, 1991  
Filed April 18, 1991



# TOWNSHIPS

## CHAPTER 693

HOUSE BILL NO. 1306  
(Representatives Schmidt, Belter, Aarsvold)  
(Senators Kinnoin, Vosper)

### TOWNSHIP CONSOLIDATION

AN ACT to provide for the establishment of multitownship boards of officers for the consolidation of up to and including five township boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Adjoining townships" means two or more townships that have a common boundary or touch at the corners and are in the same county.
2. "Multitownship board of officers" means a board of officers established for two or more townships consisting of a multitownship board of supervisors, a multitownship clerk, and a multitownship treasurer.

SECTION 2. Consolidation of township officers - Petition - Membership. The board of township supervisors of a township shall propose a plan for the consolidation of the board of township officers with the officers of adjoining townships when three qualified electors or five percent of the qualified electors of the township, as determined by the number of qualified electors voting at the last annual township meeting, whichever is greater, petition the board. The township clerk, within fourteen days of receiving a petition, shall notify the board of township supervisors of each adjoining township of the proposal for consolidation and submit a copy of the proposal to the county auditor. The boards of township supervisors of each adjoining township shall respond to the proposal within thirty days.

If the response of a board of township supervisors of an adjoining township indicates that the consolidation should be pursued, the clerk of the township proposing the consolidation shall call a meeting, or meetings if necessary, at a time and place agreed upon by the boards of each township. The chairman of the board of township supervisors of the township proposing the consolidation shall preside at the meeting. If requested by the board of township supervisors of the township proposing the consolidation, the board of township supervisors of each township shall submit a report of the assets, liabilities, and overall financial condition of each township for review by the other boards of township supervisors.

If one or more boards of the townships responding to the proposal agreed to further pursue the proposed consolidation, the question of consolidation must be presented to the electors of each of the townships. However, no more than five adjoining townships may consolidate. Notice of the presentation of the question to the electors must be submitted to the

county auditor by the board of township supervisors of the township proposing the consolidation. Upon receiving that notice, the county auditor shall assign an identifying number to the proposed multitownship board and notify the board of supervisors of each township of that number.

SECTION 3. Submission of consolidation plan to electors. The board of township supervisors of each township that is involved in the proposed consolidation shall call a special township meeting to consider and vote on the proposed consolidation. The ballot used at the election must be in substantially the following form:

Shall the townships of \_\_\_\_\_ (name of townships to be consolidated) consolidate township boards under one multitownship board of officers to be identified as multitownship board number \_\_\_\_\_.

Yes /\_\_/

No /\_\_/

If a majority of all votes cast on the question in the township proposing the consolidation and in any adjoining townships are in favor of the consolidation, the consolidation is approved for those township boards of officers.

SECTION 4. Equalization of assets and liabilities of townships. The boards of township officers of each township voting in favor of the consolidation shall meet at a place designated by the board of township supervisors of the township that proposed the consolidation within thirty days following the election to equalize the property, funds, and debts of the townships. In addition, the boards shall perform any other actions necessary to carry out the consolidation of the township, including conveying, selling, or disposing of property that is not necessary for the operation of the townships except the township halls.

SECTION 5. Settlement of disagreement. If the boards of township officers of the consolidating townships are unable to equalize the property, funds, and debts of the townships, the chairman of the board of township supervisors of the township that proposed the consolidation shall immediately notify the board of county commissioners of the disagreement. The chairman of the board of county commissioners shall call a meeting of the boards of township officers of the consolidating townships, the county commissioners, the state's attorney, and the county auditor to attempt to settle the disagreement to the satisfaction of all the township boards. If the disagreement is not settled to the satisfaction of all boards involved in the consolidation, the boards of the townships agreeing to the equalization may proceed with the consolidation. The township board of officers of each consolidating township shall meet at least once to review the final equalization of the assets and liabilities of the township.

SECTION 6. Transition board. The board of township supervisors of each township involved in the consolidation shall select one supervisor to be a member of a transition township board. If there are fewer than three townships involved in the consolidation, each board of township supervisors may select two supervisors to be members of the transition board. The clerk of the township that proposed the consolidation shall act as clerk for the transition board. The transition board shall assume all the powers and

duties of the township officers of each township approving the consolidation on the first of January following the election. The transition board shall continue in existence until the first annual meeting of the consolidated townships and shall prepare a proposed budget for the multitownship board.

**SECTION 7. Multitownship board - Election.** On the third Tuesday of March following the consolidation election, a multitownship meeting must be held and the qualified electors shall elect a multitownship board of supervisors. If the number of consolidated townships is five or fewer, the multitownship board of supervisors must consist of one supervisor elected from each township. If the number of consolidated townships is two or four, an additional township supervisor must be elected at large so the multitownship board consists of three or five members. The length of the terms of the supervisors first elected must be staggered so that the terms of an equal amount of supervisors, or as nearly as practicable, expire each year. In addition, the qualified electors shall elect a multitownship clerk and a multitownship treasurer. The multitownship officers elected at the annual meeting shall assume all the powers and duties of the township officers of the townships approving the consolidation.

**SECTION 8. General township laws applicable.** When applicable, all laws relating to a board of township supervisors apply to a multitownship board of supervisors.

Approved April 3, 1991  
Filed April 4, 1991

# TRUSTS, USES, AND POWERS

## CHAPTER 694

SENATE BILL NO. 2292  
(Satrom, Stenehjem)

### TRUST FUND INVESTMENT IN MUTUAL FUNDS

AN ACT to amend and reenact section 59-02-05.1 of the North Dakota Century Code, relating to investment of trust funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-02-05.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

59-02-05.1. Investment of trust funds in mutual funds. Notwithstanding section 59-02-05, instead of investments specified in the trust, a trustee, unless expressly prohibited by the trust, may invest trust funds in shares of investment companies that are registered under the Investment ~~Companies~~ Company Act of 1940, as amended, and which invest in the investments specified in the trust. If the investments specified in the trust are direct obligations of the United States government or obligations issued by agencies of the United States, the investments may be made in the form of securities or other interests in an open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as amended, if the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations and the investment company or investment trust takes delivery of the collateral directly or through an authorized custodian.

Approved March 11, 1991  
Filed March 11, 1991

## CHAPTER 695

HOUSE BILL NO. 1449  
(Payne, Kloubec)

**TRUSTEE POWERS**

AN ACT to amend and reenact sections 59-04-15 and 59-04-17 of the North Dakota Century Code, relating to powers and reports of trustees; and to repeal section 59-04-20 of the North Dakota Century Code, relating to evidence accompanying accounts of trustees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 59-04-15 of the North Dakota Century Code is amended and reenacted as follows:

59-04-15. Powers and duties of trustee.

1. Every act of the trustee in contravention of the terms of the trust and statute ~~shall be~~ is absolutely void except where the district or county court having jurisdiction and supervision of the administration of ~~such the~~ trust, by order, on notice and hearing as provided in this chapter, ~~shall authorize any such~~ authorizes the trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in ~~such the~~ manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that ~~such the~~ order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested ~~therein in the trust estate~~, or who thereafter may acquire an interest ~~therein in the trust estate~~, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of ~~such the~~ instrument will tend to destroy the trust estate or create losses of principal or income.
2. Unless otherwise provided by the terms of the trust or an order in a supervised proceeding, a trustee acting reasonably for the benefit of the beneficiaries may exercise the powers granted to a personal representative under section 30.1-18-15.
3. A trust agreement may grant the powers of section 30.1-18-15, as those powers exist on the date of signing the agreement, to a trustee by a specific reference to section 30.1-18-15.

SECTION 2. AMENDMENT. Section 59-04-17 of the North Dakota Century Code is amended and reenacted as follows:

59-04-17. Reports of trustee. The trustee of every trust estate placed under the supervision of the court as is provided in this chapter,

within ten days after the entry of the order taking jurisdiction of ~~such the~~ estate, shall file with the clerk of court a verified itemized account and report showing in detail the description, location, and value of all assets of the trust estate, the disposition ~~thereof of the assets~~, the income ~~therefrom~~ from the assets after the inception of the trust, and, annually thereafter, ~~said the~~ trustee shall file a verified like account and report ~~together with all vouchers and receipts, as is provided in section 59-04-20, duly verified.~~ The court, at any time and upon its own motion, or upon good cause shown by a petition of any beneficiary, and with or without notice, may require and compel the trustee to file a special itemized account, or report of any acts done, or acts contemplated by ~~him the trustee~~ in the disposition or investment of the trust. No account or report ~~shall~~ may be approved without notice of hearing as is provided by this chapter.

SECTION 3. REPEAL. Section 59-04-20 of the North Dakota Century Code is repealed.

Approved March 25, 1991  
Filed March 26, 1991

# WAREHOUSING AND DEPOSITS

## CHAPTER 696

HOUSE BILL NO. 1137

(Committee on Agriculture)

(At the request of the Public Service Commission)

## WAREHOUSING BEANS AND GRAIN

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to warehouse charges for grain owned by the United States; to amend and reenact subsection 2 of section 60-02-16, and sections 60-02-17, 60-02-27, and 60-02-35.1 of the North Dakota Century Code, relating to the contents and provisions of warehouse receipts used by grain warehouses, use of and posting in grain warehouses of official grades of grain and seeds as established by the secretary of agriculture of the United States, and insurance and suspension of license for failure to maintain insurance of grain warehousemen; and to repeal section 60-02-31.1 of the North Dakota Century Code, relating to delivery of dry edible beans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 60-02-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Contain the following provisions:

- a. The place and date when the grain was received;
- b. The name and address of the owner of the grain;
- c. The kind and grade of the grain according to the official standards established by the secretary of agriculture of the United States, except that receipts issued for dry edible beans must reference, in lieu of a grade designation, the number of the scale tickets containing a description of the beans including the percentage of foreign material, splits, check seed coats, total pick, and moisture; and
- d. The gross weight, dockage, and net weight of the grain according to North Dakota standard weight.

\* SECTION 2. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery. A warehouse receipt shall contain, either on its face or reverse side, the following warehouse and storage contract:

"This grain is received, insured, and stored subject to the following charges: one-tenth of one cent per net bushel [35.24 liters] per day, except for dry edible beans which shall be subject to a daily

\* NOTE: Section 60-02-17 was also amended by section 1 of Senate Bill No. 2491, chapter 697.

storage rate fixed at the time of delivery no greater than one-half of one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no storage shall be charged for grain so stored for fifteen days from date of delivery if such grain is sold within such fifteen-day period; however, if such grain is not sold within the fifteen days, storage charges shall commence from the date a warehouse receipt was issued. All grain received for storage shall be subject to a charge of seven cents per net bushel [35.24 liters], except for flax which shall be subject to a charge of seven cents per gross bushel [35.24 liters] and dry edible beans which shall be subject to a charge of ten cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman shall be exempt from the receiving and redelivery charges. Upon Except for dry edible beans, upon surrender of this receipt and payment or tender of a delivery charge per gross bushel [35.24 liters] of five cents on flax, three dollars per net hundredweight [45.36 kilograms] on dry edible beans, and five cents per net bushel [35.24 liters] on all other grains and all other stated lawful charges accrued up to the time of surrender of this receipt, the above amount, kind, and grade of grain will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, shall be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of the above charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade shall be delivered. Dry edible beans will be delivered to the holder in accordance with the warehouseman's delivery policy upon the surrender of this receipt and payment or tender of all lawful charges accrued up to the time of surrender including the charge for delivery contained in the delivery policy."

SECTION 3. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted. All public warehousemen shall purchase and store grain ~~and seeds~~ except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with their policy which must be filed with the commission and posted in a conspicuous place in their warehouse.

SECTION 4. AMENDMENT. Section 60-02-35.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license. An insurance company shall give at least ~~thirty~~ sixty days' notice to the commission and the insured by certified mail return receipt requested before



cancellation of an insurance policy required in section 60-02-35. ~~if insurance is canceled.~~ Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commission, without hearing, shall immediately suspend the warehouseman's license of the warehouseman until satisfactory evidence of an effective insurance policy has been submitted to and the suspension may not be removed until a new policy has been filed and approved by the commission. When a license is so suspended the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 5. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Warehouse charges for grain owned by the United States. Notwithstanding any other provision of this chapter, the commission may establish charges by rule for the storage, receipt, and redelivery of grain owned by the United States or its agencies when necessary to allow public warehousemen to store that grain, recover their costs, and obtain a reasonable return. A warehouse receipt issued to the United States or its agencies must identify the charges established by the commission. Unless otherwise prohibited or limited by the commission, the charges may remain effective after assignment of the grain by the United States for such time as agreed to by the warehouseman after which time the grain is subject to the charges prescribed by this chapter.

SECTION 6. REPEAL. Section 60-02-31.1 of the North Dakota Century Code is repealed.

Approved March 27, 1991  
Filed March 28, 1991

## CHAPTER 697

SENATE BILL NO. 2491  
(Senators Thane, Kinnoin, Dotzenrod)  
(Representatives Nichols, Nicholas)

### WAREHOUSE GRAIN STORAGE RATES

AN ACT to amend and reenact section 60-02-17 of the North Dakota Century Code, relating to warehouse storage rates; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery. A warehouse receipt shall contain, either on its face or reverse side, the following warehouse and storage contract:

"This grain is received, insured, and stored subject to the following charges: one-tenth of one cent per net bushel [35.24 liters] per day, except for dry edible beans which shall be subject to a daily storage rate fixed at the time of delivery no greater than one-half of one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no storage shall be charged for grain so stored for fifteen days from date of delivery if such grain is sold within such fifteen-day period; however, if such grain is not sold within the fifteen days, storage charges shall commence from the date a warehouse receipt was issued. All grain received for storage shall be subject to a charge of seven cents per net bushel [35.24 liters], except for flax which shall be subject to a charge of seven cents per gross bushel [35.24 liters] and dry edible beans which shall be subject to a charge of ten cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman shall be exempt from the receiving and redelivery charges. Upon surrender of this receipt and payment or tender of a delivery charge per gross bushel [35.24 liters] of five cents on flax, three dollars per net hundredweight [45.36 kilograms] on dry edible beans, and five cents per net bushel [35.24 liters] on all other grains and all other stated lawful charges accrued up to the time of surrender of this receipt, the above amount, kind, and grade of grain will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, shall be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of the above charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the

\* NOTE: Section 60-02-17 was also amended by section 2 of House Bill No. 1137, chapter 696.

identical grain specified herein, but an equal amount of grain of the same kind and grade shall be delivered."

A warehouseman may charge a different storage rate for grain stored for the United States government under the Food Security Wheat Reserve Act, Pub. L. 101-624, as amended, if the rate is filed with the commission and identified on the warehouse receipt.

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

Approved February 6, 1991  
Filed February 6, 1991

# WATERS

## CHAPTER 698

HOUSE BILL NO. 1198

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

### WATER COMMISSION MEMBERS

AN ACT to amend and reenact section 61-02-04 of the North Dakota Century Code, relating to membership of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-04 of the North Dakota Century Code is amended and reenacted as follows:

61-02-04. State water commission - Members - Terms - Qualifications. The state water commission shall consist of the governor, commissioner of agriculture, and seven other members to be appointed by the governor who shall take into account reasonable geographic considerations in making such appointments. The governor or the commissioner of agriculture, or both, may appoint a representative to serve in his stead that official's capacity at such meetings as he that official may be unable to attend. The seven appointive members of the commission shall be appointed for a term of six years each with their terms of office so arranged that two terms and not more than three terms shall expire on the first day of July of each odd-numbered year. Each appointive member shall be a qualified elector of the state and shall be subject to removal by judicial procedure. In case of a vacancy, the vacancy shall be filled by appointment by the governor for the remainder of the unexpired term. Before entering upon the discharge of ~~his~~ official duties, each appointive member shall take, subscribe, and file with the secretary of state the oath prescribed for civil officers.

Approved March 11, 1991

Filed March 11, 1991

## CHAPTER 699

SENATE BILL NO. 2209  
(Committee on Natural Resources)  
(At the request of State Water Commission)

### MODIFICATION OF UNSAFE WORKS

AN ACT to amend and reenact section 61-03-21.2 of the North Dakota Century Code, relating to the modification of unsafe or authorized works.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-03-21.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-03-21.2. Removal or modification of unsafe or unauthorized works. If the state engineer pursuant to his authority under title 61 determines that works are unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last known post-office address of record. A copy of the notice must also be sent to any tenant, if the state engineer has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal or modification of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

Approved March 25, 1991  
Filed March 26, 1991

# CHAPTER 700

SENATE BILL NO. 2142  
(Committee on Natural Resources)  
(At the request of the State Water Commission)

## WATER PERMIT FEES

AN ACT to amend and reenact section 61-04-04.1 of the North Dakota Century Code, relating to fees for water permit applications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-04-04.1. Application fees. The following fees ~~shall~~ must accompany an application and must be paid by the state engineer into the water use fund of the state treasury:

- 1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census ..... ~~¢250~~ \$500
- 2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census ..... ~~¢150~~ \$250
- 3. For irrigation ..... ~~¢100~~ \$200
- 4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893,039.52 cubic meters] or less ..... ~~¢150~~ \$250
- 5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893,039.52 cubic meters] ..... ~~¢500~~ \$750
- 6. For recreation, livestock, or fish and wildlife ..... ~~¢ 50~~ \$100
- 7. For commercial recreation ..... ~~¢100~~ \$200
- 8. Water permit amendment ..... \$ 50

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 701

SENATE BILL NO. 2147  
(Committee on Natural Resources)  
(At the request of the Water Commission)

### **WATER PERMIT ERROR CORRECTION**

AN ACT to amend and reenact section 61-04-28 of the North Dakota Century Code, relating to correction of errors in applications for water permits or water permits by the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-28 of the North Dakota Century Code is amended and reenacted as follows:

61-04-28. Correction of application or water right by state engineer. Upon proof satisfactory to ~~him~~ the state engineer that an application for a water permit or any water permit contains an error relative to the point of diversion ~~or, the~~ legal description of the land to which the water is to be applied, or the quantity of water, the state engineer may, by written notice to the holder of the affected water permit, correct ~~such~~ the error without publication of notice.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 702

SENATE BILL NO. 2092  
 (Senators Streibel, Naaden, Traynor)  
 (Representatives Henegar, Belter, Clayburgh)

### GARRISON DIVERSION CONSERVANCY DISTRICT

AN ACT to amend and reenact subsections 3 and 5 of section 61-24-01 and section 61-24-02 of the North Dakota Century Code, relating to the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 61-24-01 of the North Dakota Century Code are amended and reenacted as follows:

3. To replenish and restore the depleted waters of lakes, the Red, Sheyenne, James, and other rivers, and streams in such the district, and to stabilize the flow of said these streams.
5. To make available within the district, waters diverted from the Missouri River for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public uses.

SECTION 2. AMENDMENT. Section 61-24-02 of the North Dakota Century Code is amended and reenacted as follows:

61-24-02. Garrison Diversion Conservancy District created. The "Garrison Diversion Conservancy District", hereinafter referred to as the "district" ~~shall consist~~ consists of that part of the state ~~which~~ that is included within the boundaries of the following counties, ~~to wit:~~ Barnes, Benson, Bottineau, Burleigh, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoire, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Richland, Sargent, Sheridan, Steele, Stutsman, Traill, Ward, and Wells.

~~Such~~ The district ~~shall be~~ is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county ~~adjoining the district as herein created; or as hereafter composed;~~ may join such the district upon application of its board of county commissioners and the approval of such the application by the board of directors of the district. ~~The board of directors, as a condition of approval of such application, may require the levy of such taxes within said county as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the district. Such county is hereby authorized to levy such taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy shall be~~ is in addition to the amount ~~which that~~ that may otherwise be legally levied for county purposes.

Approved March 25, 1991  
 Filed March 26, 1991



## CHAPTER 703

HOUSE BILL NO. 1455  
(Mahoney, Dalrymple)

**FILLING OF VACANCY ON GARRISON DIVERSION  
CONSERVANCY BOARD**

AN ACT to amend and reenact section 61-24-03.1 of the North Dakota Century Code, relating to filling vacancies of directors of the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-24-03.1. Filling vacancy of director on general election ballot. Whenever a vacancy exists on a general election no-party ballot for any directorship of the Garrison Diversion Conservancy District, ~~such the~~ vacancy may be filled by filing with the county auditor at least ~~thirty~~ sixty days prior to the general election a petition substantially in the form provided in section 61-24-03, stating that the petitioner desires to become a candidate for election to the office of director. This petition must contain the signatures of not less than fifty qualified electors of the county, unless there were at least fifty write-in or sticker votes for the petitioner cast in the no-party primary election for ~~such~~ the office.

A vacancy in the no-party ballot ~~shall be~~ is deemed to exist when no candidate is nominated at the primary election or when a candidate nominated at the primary ~~shall die, resign~~ dies, resigns, or otherwise ~~become~~ becomes disqualified to have ~~his~~ that person's name printed on the ballot at the general election.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 704

SENATE BILL NO. 2357  
(Senators Redlin, O. Hanson, E. Hanson)  
(Representatives Tollefson, Nichols, Gilmore)

### **NORTHWEST AREA WATER SUPPLY PROJECT**

AN ACT to provide for the creation of the northwest area water supply advisory committee and to authorize the state water commission to develop and construct a northwest area water supply project; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Findings and declaration of policy. It is hereby found and declared by the legislative assembly that many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project be pursued that would supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses.

The provisions of this Act may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary to those rights, powers, duties, and functions.

SECTION 2. Northwest area water supply advisory committee - Created. The northwest area water supply advisory committee consists of the following representatives, appointed by the state engineer:

1. One person from the city of Minot recommended by the Minot city council.
2. One person from the city of Williston recommended by the Williston city council.
3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County water resource districts.
4. One representative of the state water commission recommended by the commission.
5. One representative of the Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea recommended by the tribal council.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Renville, Ward, or Williams County.
8. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
9. One at-large representative.

**SECTION 3. Advisory committee - Officers - Meetings - Compensation.**

The northwest area water supply advisory committee shall elect a chairman and vice chairman. The advisory committee shall meet at the times and places necessary to carry out the purposes of this Act. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the state engineer. Vacancies must be filled in the same manner as original appointments are made.

**SECTION 4. Powers of the state water commission in consultation with the northwest area water supply advisory committee.** The state water commission may, in consultation with the northwest area water supply advisory committee:

1. Accept funds, property, services, or other assistance, financial or otherwise, from federal, state, tribal, and other public or private sources for the purpose of aiding and promoting the development of a project to deliver water to northwestern North Dakota.
2. Cooperate and contract with the state, its agencies, or its political subdivisions, the Three Affiliated Tribes, or any agency of the United States, in research and investigation or other

activities promoting the development of a project to deliver water to northwestern North Dakota.

3. Appoint and procure the services of engineers, attorneys, and others to assist in developing a project to deliver water to northwestern North Dakota.
4. Exercise such other powers as may be necessary for, or incidental to, the achievement of the purposes of this Act.
5. Construct, operate, and manage a project to deliver water throughout northwestern North Dakota.

SECTION 5. State engineer - Employment of staff. The state engineer may employ full-time personnel and may employ such other personnel as are necessary for the administration of this Act and as available funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this Act may be used for salaries and expenses of persons employed pursuant to this Act.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 705

HOUSE BILL NO. 1376  
(Representatives Urlacher, Martin, Larson)  
(Senators Goetz, Tallackson)

### **SOUTHWEST WATER AUTHORITY**

AN ACT to provide for creation of the southwest water authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Findings and declaration of policy. It is hereby found and declared by the legislative assembly that many areas and localities in southwestern North Dakota do not enjoy adequate quantities of high quality drinking water. It is also found and declared that other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. It is further found and declared that supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

It is further declared that opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and necessitate and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, be established and constructed, to:

1. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including, but not limited to, domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
2. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.

The provisions hereof may not be construed to abrogate or limit the rights, powers, duties, and functions of the state water commission or the state engineer, but must be considered supplementary thereto.

SECTION 2. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Authority" means the southwest water authority.
2. "Board" means the board of directors of the southwest water authority.
3. "Person" includes any natural person, state agency, municipality, political subdivision, public or private corporation, partnership, or association.
4. "Southwest pipeline project" includes the project and works, or any part thereof, authorized in chapter 61-24.3
5. "Works" includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for operation of the southwest pipeline project, all water rights acquired and exercised by the authority in connection with the southwest pipeline project, and all means of delivering and distributing water through the utilization of a pipeline transmission and delivery system, as authorized in chapter 61-24.3

SECTION 3. Southwest water authority created. The southwest water authority shall consist of that part of the state which is included within the boundaries of: Dunn, Stark, Golden Valley, Billings, Slope, Bowman, Adams, Grant, Hettinger, Morton, and Mercer Counties.

Such authority is a governmental agency, body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied.

Any county adjoining the authority as herein created, or as hereafter composed, may join such authority upon application of its board of county commissioners and the approval of such application by the board of directors of the authority. The board of directors, as a condition of approval of such application, may require payments as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the authority.

SECTION 4. Board of directors - Officers - Meetings - Compensation. The authority shall be governed by a board of directors who must be chosen in accordance with the provisions of this chapter. At the first election after the initial board of directors has been appointed, two directors must be elected from each county within the authority, and three directors must be elected in the city of Dickinson. The two directors from Stark County may not be residents of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members shall receive compensation in the amount not to exceed the amount provided for by subsection 1 of section 54-35-10, and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

SECTION 5. Initial board of directors. Immediately upon the effective date of the creation of the authority, each county commission in the

authority shall appoint two directors from their respective counties, and the city commission of Dickinson shall appoint three directors from the city of Dickinson, to serve on the initial board of directors of the authority. Directors so appointed shall assume office on the first day of June 1991, and shall serve until their successors are duly elected and ready to assume office. The initial board of directors shall meet at a time and place designated by the state engineer, after June 1, 1991, and they shall organize. Appointed directors may be candidates for election to the board of directors.

SECTION 6. Election of county directors of the southwest water authority. Any person who is a resident and qualified elector of the county, who aspires to the office of director of the southwest water authority, shall, not more than seventy days or less than fifty-five days and before four p.m. of the fifty-fifth day prior to any primary election preceding a general election at which a director of the authority is to be elected, present to the county auditor a petition giving his name, post-office address, and the title of the office of the southwest water authority to which he is seeking election. The petition must contain the signatures of not less than fifty nor more than three hundred qualified electors of the county. Each signer of such petition shall include with his name his mailing address.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA )  
 ) ss.  
 COUNTY OF )

I \_\_\_\_\_, being duly sworn, depose and say that I reside in the (county) of \_\_\_\_\_ and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the primary election to be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, and I do hereby request that my name be printed upon the no-party primary election ballot as provided by law, as a candidate for said office.

\_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
 Notary Public, North Dakota

Upon receipt of the petition the county auditor shall without fee place the name of the aspirant on the no-party primary election ballot as a candidate for the aforesaid office of director. The candidate receiving the highest number of votes shall be elected.

At the primary election votes must be canvassed, returned certified, and certificates of election issued in the manner provided by law for the election of county officers.

SECTION 7. Election of city directors of the southwest water authority. Any person who is a resident and qualified elector of the city of Dickinson who aspires to the office of director of the southwest water

authority shall, at least thirty-three days and before four p.m. on the thirty-third day prior to the holding of the election, file with the city auditor a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election, except that the petition for the first such election must be signed by not less than two hundred qualified electors. Signers of a petition shall reside within the corporate limits of the city, and each signer of the petition shall include with his name his mailing address. The petition must include the candidate's name, post-office address, and the title of the office of the southwest water authority for which he is seeking election.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA )  
 ) ss.  
 CITY OF DICKINSON )

I \_\_\_\_\_, being duly sworn, depose and say that I reside in the city of Dickinson and State of North Dakota; that I am a qualified elector therein; that I am a candidate for the office of director of the Southwest Water Authority to be elected at the municipal election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, and I do hereby request that my name be printed upon the election ballot as provided by law, as a candidate for such office.

\_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
 Notary Public, North Dakota

Upon receipt of the petition the city auditor shall without fee place the name of the aspirant on the election ballot as a candidate for the aforesaid office of director. The candidate or candidates, depending on whether one or two directors are being elected, receiving the highest number of votes are elected. The provisions of chapter 40-21 govern the election of directors from the city of Dickinson for the southwest water authority.

SECTION 8. Term of office of directors - Oath of office - Bonds. Members of the board of directors of the authority shall hold office for a term of four years, until a successor has been duly elected and qualified, but one-half of the first county directors elected shall hold office for a term of two years, and one-half shall hold office for a term of four years. Two of the three first city directors shall hold office for a term of four years, and the third shall hold office for a term of two years. Terms of office of directors elected at the first election must be determined by lot. Each county shall have one two-year director and one four-year director, and the city of Dickinson shall have one two-year and two four-year directors on the first elected board of directors. Directors elected thereafter shall hold office for a term of four years. If the office of any director becomes vacant by reason of the failure of any director elected at any election to qualify or for any other reason, his successor must be appointed to fill the vacancy by the board of county commissioners of the county in which the vacancy occurs, or by the governing body of the city of Dickinson. A director appointed to fill a vacancy shall hold office for the unexpired term



of the director whose office has become vacant, and until his successor has been elected and qualified.

Members of the board of directors from a county must be elected at the primary election, beginning in 1992, and shall assume office on the first Monday in July following their election. Members of the board of directors elected from the city of Dickinson must be elected at the municipal election, beginning in 1992, and shall assume office on the first Monday in July following their election.

SECTION 9. Powers and duties of the district board of directors. The board of directors of the southwest water authority has the power:

1. To sue and be sued in the name of the authority.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, and all other appurtenant facilities used in connection with the southwest pipeline project, or any part thereof.
3. To accept funds, property and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the southwest pipeline project, or any part thereof.
4. To cooperate and contract with the state, its agencies, or its political subdivisions, or any agency of the United States, in research and investigation or other activities promoting the establishment, construction, development, or operation of the southwest pipeline project, or any part thereof.
5. To furnish assurances of cooperation, and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations and political subdivisions of North Dakota for the performance of obligations for the construction, operation, or maintenance of the southwest pipeline project, or any part thereof, or for the delivery of water to any such department, agency, or political subdivision.
6. To construct or purchase separately or in cooperation with agencies of the United States, or the state of North Dakota, its agencies or political subdivisions, and to equip, maintain, and operate an office and principal place of business for the district, or other buildings or facilities to carry out activities authorized by this chapter.
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the authority, and to procure the services of engineers and other technical experts, and to retain an attorney or attorneys to assist, advise, and act for it in its proceedings.

8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation, and maintenance of the southwest pipeline project, or any part thereof.
9. To enter into a contract or contracts for a supply of water from the United States or the state water commission and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or the state water commission and authorization to make collections of money for and on behalf of the United States or the state water commission in connection with the southwest pipeline project, or any part thereof.
11. To sell or exchange any and all real property purchased or acquired by the authority. All moneys received pursuant to any such sale or exchange shall be deposited to the credit of the authority and may be disbursed for the payment of expenses of the authority.

SECTION 10. District budget - Tax levy. Beginning in 1992, and each year thereafter, through December 31, 1997, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. The power to levy a tax does not extend beyond December 31, 1997. All moneys collected pursuant to such levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, guaranteed by the United States or an instrumentality or agency thereof, bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-12.1-11.

SECTION 11. District budget - Determination of amount to be levied - Adoption of levy - Limitation. In July of each year the board of directors shall estimate and itemize all the administrative expenses and obligations of the district, including expenses of directors, expenses of operating the office, and any other obligations and liabilities relating to administrative, clerical, engineering, surveying, investigations, legal, and other related expenses of the authority. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy must be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution must levy in mills, but may not exceed one mill, and must be sufficient to meet the administrative, engineering, surveying, investigations, legal and related expenses, obligations, and liabilities of the district as provided in the budget. The board shall also prepare and

adopt an annual budget for operation, management, maintenance, and repayment of the southwest pipeline project. Revenues for operation, management, maintenance, and repayment of the southwest pipeline project must come from water service contract revenues.

SECTION 12. Board to certify mill levy to city auditors, county auditors, and state tax commissioner. Upon the adoption of the annual mill levy by the board of directors, but no later than October first, the secretary of the board shall send one certified copy of the mill levy to the county auditor of each county which is a member of the authority. Copies of all such documents must be sent to the state tax commissioner.

SECTION 13. County auditors to extend tax levy. The county auditor of each county within the authority, to whom a mill levy is certified in accordance with this chapter, shall extend the levy upon the tax lists for the current year against each description of real property and all personal property within the county in the same manner and with the same effect as other taxes are extended.

SECTION 14. County treasurer or city auditor to collect and remit district taxes - District fund established - Nonreverter - Disbursements. The treasurer of each county in which a mill levy has been certified shall collect the taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the treasurer of the authority, on demand, all taxes, interest, and penalties so collected, and shall forthwith notify the secretary of the authority of such payment. Expenditures must be made by the board of directors upon vouchers signed by the chairman of the board.

SECTION 15. Proceedings to confirm contract. The board of directors of the authority, after entering into a contract with the United States government, the state of North Dakota, or with any public corporation or political subdivision of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, must be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding must comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

SECTION 16. Procedure for exclusion from authority of county not benefited.

1. Any county in the authority not benefited or not to be benefited, in whole or in part, by the southwest pipeline project, or any part thereof, may be excluded from the authority as provided herein. The board of county commissioners of any such county may by resolution direct the county auditor and the chairman of the board to file with the board of directors of the authority a petition, for and on behalf of the county, requesting the board of directors of the authority to exclude such county therefrom. A certified copy of the resolution of the county board must accompany and be filed with such petition. The petition and resolution must state specific reasons why such county will not be benefited by the southwest pipeline project, or any part thereof.
2. Within sixty days from the date of filing said resolution and petition for exclusion from the authority, the authority board

shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing is set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed within the authority. The hearing mentioned in such notice must be held not less than nor more than twenty days after the last publication of such notice. The notice must state that any person, corporation, municipality, and county in the authority may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.

3. If after the hearing on the petition the authority board of directors shall determine that the county requesting to be excluded from the authority will not be benefited, the authority board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the authority. If, however, the authority board shall decide that such county will be benefited it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the authority. A county excluded from the authority is not liable for any obligations thereof incurred after exclusion but is liable for and shall pay to the authority taxes levied before exclusion.
4. If any contract has been made with the United States or any agency thereof, or the state of North Dakota or any agency thereof, before such petition is filed, such petition may not be granted unless consented thereto by the appropriate agency of the United States or North Dakota, and if such agency gives its consent upon condition, such conditions must be included in the order of exclusion and the county may be required to, and in that event such county shall continue to, pay and satisfy any obligations under any such contract.

SECTION 17. Appeal from orders of authority board. An appeal from an order of the board of directors of the authority denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal provided for herein must be taken within thirty days after the order of the authority board has been filed with the secretary thereof and public notice of such order has been made. The appeal must be taken by serving notice of appeal upon the secretary of the authority. The appeal must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the authority, from any judgment entered therein in district court, and from any order of said court if an appeal would lie from such order if entered by the court in a civil action.

SECTION 18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands. In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the

southwest pipeline project, provided, however, that the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of any and all right of way of roads prior to such grant becoming effective.

SECTION 19. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 706

SENATE BILL NO. 2159  
(Committee on Human Services and Veterans Affairs)  
(At the request of the State Department of Health and  
Consolidated Laboratories)

### SAFE DRINKING WATER ACT PENALTIES

AN ACT to create and enact a new subsection to section 61-28.1-10 of the North Dakota Century Code, relating to enforcement and penalties under the safe drinking water act; and to amend and reenact subsection 2 of section 61-28.1-10 of the North Dakota Century Code, relating to enforcement and penalties under the safe drinking water act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 61-28.1-10 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person who willfully violates this chapter or any regulation or order of the department shall be punished by a civil penalty of not more than ~~five~~ ten thousand dollars per day of violation.

SECTION 2. A new subsection to section 61-28.1-10 of the North Dakota Century Code is created and enacted as follows:

Any person who violates this chapter, or any rule implementing this chapter, and any person who violates any order issued by the department under this chapter is subject to a civil penalty not to exceed five thousand dollars per day of violation.

Approved March 25, 1991  
Filed March 26, 1991

## CHAPTER 707

SENATE BILL NO. 2513  
(Senator Marks)  
(Representative Williams)

**FRIVOLOUS COMPLAINTS ON DRAINS**

AN ACT to amend and reenact section 61-32-07 of the North Dakota Century Code, relating to frivolous complaints concerning noncomplying drains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-32-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules ~~or regulations promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and ~~shall~~ must state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board ~~shall determine~~ determines, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is

not a prerequisite to ~~such~~ an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

Approved March 15, 1991  
Filed March 15, 1991



## CHAPTER 708

HOUSE BILL NO. 1471  
(Representatives DeWitz, Boehm)  
(Senators Keller, Tomac, Freborg)

### SOVEREIGN LANDS

AN ACT to amend and reenact subsection 3 of section 61-33-01 of the North Dakota Century Code, relating to the definition of sovereign lands for purposes of sovereign land management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-33-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Sovereign lands" means those areas, including beds, and islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high watermark and are not sovereign lands.

Approved April 9, 1991  
Filed April 9, 1991

## CHAPTER 709

SENATE BILL NO. 2359  
(Senator Meyer)  
(Representative Nichols)

### **LIVESTOCK WATER ASSISTANCE PROGRAM**

AN ACT relating to the establishment of a livestock water assistance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. "State engineer" means the state engineer appointed under section 61-03-01.

SECTION 2. Drought disaster livestock water assistance program - Administration. The commission shall administer the program for the purpose of providing relief for livestock water supply problems caused by drought.

SECTION 3. Advisory committee. The commission shall appoint an advisory committee of at least three members. The committee shall advise the commission in determining the criteria for eligibility, in defining expenses covered by the program, and in developing rules.

SECTION 4. Eligibility - Application for assistance. Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost share assistance from the agriculture stabilization and conservation service. If cost share assistance is denied by the service, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the agriculture stabilization and conservation service stating the reason for denial of cost share assistance. The state engineer shall review all applications received by the commission. If the state engineer approves an application, the applicant may receive up to fifty percent of the cost of the project, but in no event more than three thousand five hundred dollars. The state engineer shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available.

Approved March 25, 1991  
Filed March 26, 1991

# WEAPONS

## CHAPTER 710

SENATE BILL NO. 2114  
(Committee on Judiciary)  
(At the request of the Attorney General)

### CONCEALED WEAPONS LICENSE FEES

AN ACT to amend and reenact subsection 3 of section 62.1-04-03 of the North Dakota Century Code, relating to concealed weapons license fee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 62.1-04-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The license fee for a concealed weapons license is ten fifteen dollars. Ten dollars of this fee must be credited to the state general fund and five dollars of this fee must be credited to the attorney general's operating fund. The license fee must be paid before the license is issued by the chief of the bureau of criminal investigation.

Approved March 11, 1991  
Filed March 11, 1991

# WEEDS

## CHAPTER 711

SENATE BILL NO. 2235

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

### WEED CONTROL PROGRAM

AN ACT to amend and reenact subsection 2 of section 63-01.1-06, subsection 1 of section 63-01.1-06.2, subsection 1 of section 63-01.1-06.5, and subsection 4 of section 63-01.1-08 of the North Dakota Century Code, relating to noxious weed control program funding and disposition of penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 63-01.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner shall allocate the funds of any legislative appropriation to the county weed boards and cities which establish a program under section 63-01.1-10.1 pursuant to a formula adopted by the commissioner, after consultation with the director of the extension ~~division~~ service and the director of the agricultural experiment station, Fargo, or their respective designees. No county weed board may receive an amount under this subsection which, when added to the amount generated by a tax levy of three mills on the taxable valuation of all taxable property in the county, would exceed eighty percent of the total cost of the actual expenditures for noxious weed control. Landowners shall contribute a minimum of twenty percent of the cost of noxious weed control on their land. No county weed board or city shall receive an amount in excess of one-half of its actual expenditures for noxious weed control from any legislative appropriation, unless the appropriation provides assistance in noxious weed control to a board or city under subsection 3.

SECTION 2. AMENDMENT. Subsection 1 of section 63-01.1-06.2 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Landowners shall contribute at least twenty percent of the cost of the leafy spurge treatment program on their land ~~but not to exceed a total cost of sixty dollars per acre (1.40 hectare) over a two-year period.~~ Landowner contributions may be in the form of property other than money, or services, if the contribution is specifically approved by the county weed board. Otherwise, the landowner contribution shall be in money.

SECTION 3. AMENDMENT. Subsection 1 of section 63-01.1-06.5 of the North Dakota Century Code is amended and reenacted as follows:

1. Landowners shall contribute at least twenty percent of the cost of the cannabis treatment program on their land ~~but not to exceed a total cost of sixty dollars per acre (40 hectare) over a two-year period.~~ Landowner contributions may be in the form of property other than money, or services, if the contribution is specifically approved by the county weed board. Otherwise the landowner contribution shall be in money.

SECTION 4. AMENDMENT. Subsection 4 of section 63-01.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4. A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weeds on the infested area within the time designated may be fined not more than fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court. Any person accused of failure to perform remedial requirements under this section is entitled to a trial by jury, upon request. The accumulated fines under this section are a lien against the property of the landowner from the day the resolution is delivered to the landowner by the ~~county~~ weed board. All fines collected pursuant to this section shall be deposited with the ~~state~~ treasurer of the political subdivision and credited to the ~~state school fund~~ weed board noxious weed control fund in the political subdivision in which the fine originated.

Approved April 3, 1991

Filed April 4, 1991

**CHAPTER 712**

SENATE BILL NO. 2460  
(Senators Keller, Meyer, Freborg)  
(Representatives R. Anderson, Mahoney)

**WEED CONTROL ON GAME AND FISH LAND**

AN ACT to amend and reenact section 63-01.1-13.1 of the North Dakota Century Code, relating to noxious weed control on game and fish land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 63-01.1-13.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13.1. Noxious weed control on game and fish land. Upon failure of the game and fish department to adequately destroy noxious weeds, or control and prevent spreading and dissemination of noxious weeds, on any parcel of land under its control, the county weed board for the county in which all or a portion of the land owned ~~and~~, leased, or managed by the game and fish department is located may, upon approval of the commissioner, enter upon the land owned ~~and~~, leased, or managed by the game and fish department for the purposes of destruction, control, or prevention of noxious weeds. All expenditures by a county weed board for destruction, control, or prevention of noxious weeds on game and fish lands pursuant to this section ~~shall~~ must be reimbursed within thirty days by the ~~state~~ game and fish department to the board upon adequate certification by the board.

Approved March 25, 1991  
Filed March 26, 1991

# WORKERS' COMPENSATION

## CHAPTER 713

HOUSE BILL NO. 1324  
(Representatives Jensen, R. Berg, Tollefson)  
(Senator Nalewaja)

### WORKERS' COMPENSATION EXEMPTION FOR REAL ESTATE PROFESSION

AN ACT to amend and reenact subdivision b of subsection 14 of section 65-01-02 of the North Dakota Century Code, relating to exemption of certain real estate brokers and real estate salespersons from mandatory contribution participation under the workers compensation laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Subdivision b of subsection 14 of section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.
- (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
  - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
  - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.
  - (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 65-01-02 was also amended by section 30 of Senate Bill No. 2068, chapter 54, and by section 23 of Senate Bill No. 2206, chapter 714.

## CHAPTER 714

SENATE BILL NO. 2206  
 (Committee on Industry, Business and Labor)  
 (At the request of the Workers Compensation Bureau)

### WORKERS' COMPENSATION RESTRUCTURING

AN ACT to create and enact a new section to chapter 54-03, a new section to chapter 65-01, seven new sections to chapter 65-02, a new section to chapter 65-04, three new sections to chapter 65-05, two new subsections to section 65-05-07, sections 65-05-08.1, 65-05-09.3, 65-05-34, 65-05-35, and a new section to chapter 65-05.1 of the North Dakota Century Code, relating to actuarial impact statements and workers' compensation administration, coverage, and benefits; to amend and reenact sections 19-20.2-07, 21-03-32, 21-10-01, subsection 6 of section 23-01.1-02, subdivision b of subsection 2 of section 26.1-23-08, sections 28-32-08, 28-32-14, 37-11-02, subsection 5 of section 43-07-01, sections 43-07-04, 43-07-25, subsection 3 of section 51-04-08, sections 52-01-02, 52-01-03, 52-02-01, 52-08-03, subsection 1 of section 54-06-04, sections 54-16-10, 54-56-01, subsection 4 of section 57-38-57, sections 57-39.2-23, 65-01-02, 65-01-09, 65-01-10, 65-02-06, 65-02-07, 65-02-08, 65-04-04, 65-04-10, 65-04-13, 65-04-14, 65-04-15, 65-04-20, 65-04-27.1, 65-04-29, 65-05-08, 65-05-09, 65-05-10, 65-05-25, 65-05-28, 65-05-33, 65-05.1-01, 65-05.1-02, 65-05.1-02.1, 65-05.1-04, 65-05.1-06.1, 65-05.2-01, 65-05.2-02, 65-06-05, 65-06.1-04, subsection 4 of section 65-06.2-02, sections 65-08-02, 65-11-04.1, 65-11-06, subsection 4 of section 65-12-02, subsection 4 of section 65-12-03, sections 65-12-04.1, 65-12-08, 65-12-12, and subsection 1 of section 65-13-03 of the North Dakota Century Code, relating to job service North Dakota, workers' compensation administration, coverage, and benefits; to repeal sections 65-02-01, 65-02-01.1, and 65-02-02 of the North Dakota Century Code, relating to the workers compensation bureau; to provide for a legislative council study; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-07 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-20.2-07. Inspection.

1. The commissioner may inspect each permanent installation for storage of anhydrous ammonia and each farm transportation wagon or vehicle designed to apply anhydrous ammonia.
2. The commissioner shall inspect any anhydrous ammonia facility where the commissioner has reason to believe violations of the safety standards under this chapter exist. The safety engineer of the North Dakota workers compensation bureau job service North Dakota shall inform the commissioner of agriculture of any violations of



this chapter that arise in the course of the safety engineer's regular inspections of anhydrous ammonia storage facilities.

- 3. The commissioner may revoke or suspend the license of any storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

SECTION 2. AMENDMENT. Section 21-03-32 of the North Dakota Century Code is amended and reenacted as follows:

21-03-32. Departments prohibited from purchasing bonds at higher prices within five years. Should the board of university and school lands, the state fire and tornado fund, ~~the workmen's compensation bureau job service North Dakota~~, the state bonding department, the Bank of North Dakota, and the industrial commission fail to submit an offer or bid for such bonds, or should said board or any of said agencies or departments offer or bid for such bonds but not be the successful purchaser or bidder, it shall not, within five years after the sale of said bonds, purchase said bonds or any part thereof, at a price greater than that paid by the successful bidder for the same.

SECTION 3. AMENDMENT. Section 21-10-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-01. State investment board - Membership - Term - Compensation. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, ~~the executive director of the workers compensation bureau job service North Dakota~~, the commissioner of insurance, the executive secretary of the teachers' fund for retirement, and three members who are experienced in, and have considerable knowledge of the field of investments, and who are not otherwise employed by the state of North Dakota. The governor shall appoint the members with investment experience to three-year, two-year, and one-year terms respectively on January 31, 1989. Thereafter, the appointed members shall serve four-year terms. The appointed members are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 4. AMENDMENT. Subsection 6 of section 23-01.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 6. Establish arrangements with the department of health and consolidated laboratories, the department of human services, the commissioner of insurance, ~~the workers compensation bureau job service North Dakota~~, and the public employees retirement system to assure patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data, and to act in a manner which does not duplicate data collection activities of other state agencies.

SECTION 5. AMENDMENT. Subdivision b of subsection 2 of section 26.1-23-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. If the judgment creditor has effected collection of a portion of the judgment from payment from ~~the workers compensation bureau job service North Dakota~~, then the amount collected from that source must be subtracted from the judgment before the procedure outlined in subdivision a is followed.

SECTION 6. AMENDMENT. Section 28-32-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-08. Specifications of any issues to be furnished by agency. Whenever an administrative agency, pursuant to authority conferred upon it by law, institutes an investigation upon its own motion or without the filing of a specified complaint, or holds any hearing or makes any independent investigation upon the claim or request of any person, no decision may be made by the agency until all parties in interest have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity has been afforded to such parties to present evidence and to be heard upon the precise issues so specified. The executive director of ~~the workers compensation bureau job service North Dakota, in the administration of title 65,~~ may make determinations without giving the notice provided by this section, but the director is subject to the requirements of section 28-32-13.

SECTION 7. AMENDMENT. Section 28-32-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-14. Petition for rehearing. Any party before an administrative agency who is aggrieved by the decision thereof, within fifteen days after a copy of such decision has been mailed or delivered to such party by the administrative agency, may request a rehearing by such agency; provided, however, that any party appearing before ~~the workers compensation bureau job service North Dakota for a proceeding arising under title 65~~ may have thirty days within which to request a rehearing. ~~He~~ The party shall submit with the request for rehearing a statement of any further showing to be made in the proceeding, and such request and statement shall constitute a part of the record in the proceeding. The administrative agency may deny such request for rehearing or may grant the same on such terms as it may prescribe. This section, however, shall not limit the right of any agency to reopen any proceeding under any continuing jurisdiction which is granted to any such agency by any law of this state.

SECTION 8. AMENDMENT. Section 37-11-02 of the North Dakota Century Code is amended and reenacted as follows:

37-11-02. Compensation for disability or death. Applications for compensation for disability or death of any member of the militia or member of the national guard under conditions as specified in section 37-11-01 must be made by such member or ~~his~~ the member's surviving dependents to ~~the workers compensation bureau job service North Dakota. The bureau~~ job service North Dakota. ~~The bureau~~ job service North Dakota shall process ~~such~~ the application in the manner set forth in title 65 and shall make determinations of eligibility and disability in the same manner and upon the same basis as provided in such title. ~~In the event the bureau~~ If job service North Dakota determines a member of the militia or national guard has been disabled under the provisions of section 37-11-01 and title 65 or valid claims of surviving dependents of such member exist in accordance with section 37-11-01 and title 65, it shall pay the claim pursuant to title 65.

SECTION 9. AMENDMENT. Subsection 5 of section 43-07-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The term "nonresident contractor" denotes and applies to any contractor who has not an established and maintained place of business within this state, or who has not made reports to the job service North Dakota workers compensation bureau, pursuant to chapter 65-04, within the previous year of employees within this state, and who has not made contribution to the job service North Dakota workers' compensation fund accordingly, or who, during a like period has not made an income tax return in this state.

SECTION 10. AMENDMENT. Section 43-07-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as hereinafter prescribed, must be filed with the application and the contractor shall submit a statement from the job service North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage pursuant to title 65 satisfactory to the bureau job service North Dakota along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. Any person refused a license by the registrar may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

SECTION 11. AMENDMENT. Section 43-07-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-25. Licensed contractors' list. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of the workers compensation bureau, job service North Dakota, or the tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 12. AMENDMENT. Subsection 3 of section 51-04-08 of the North Dakota Century Code is amended and reenacted as follows:

3. Sales made by a person who has a sales or use tax permit in accordance with chapter 57-39.2 or 57-40.2, pays contributions to job service North Dakota for unemployment compensation in accordance with chapter 52-04, and who has reported to the workers compensation bureau job service North Dakota in accordance with chapter 65-04.

SECTION 13. AMENDMENT. Section 52-01-02 of the North Dakota Century Code is amended and reenacted as follows:

52-01-02. Employing unit to keep records - Reports of employing unit - Inspection prohibited - Exception. Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. The records must be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or the chairman, ~~deems necessary requires~~ for the effective administration of the North Dakota Unemployment Compensation Law. ~~In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary requires for effective administration of the North Dakota Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of appeal tribunal.~~ Information thus obtained may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or the claimant's legal representative at a hearing before an appeal tribunal or the bureau must be supplied with information from such records to the extent necessary for the proper presentation of the claim.

SECTION 14. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or ~~his~~ the claimant's legal representative must be supplied with information from ~~his~~ the records of the job insurance division, to the extent necessary for the proper presentation of ~~his~~ the claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by ~~regulations~~ rule may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in

subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide ~~the workers compensation bureau its workers' compensation staff, the state labor commissioner of labor, the state economic development commission, and the state tax commissioner with information~~ obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the ~~workers compensation bureau, the state labor commissioner of labor, the state economic development commission, and the state tax commissioner.~~

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, ~~workers compensation bureau,~~ or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

SECTION 15. AMENDMENT. Section 52-02-01 of the North Dakota Century Code is amended and reenacted as follows:

52-02-01. Job service North Dakota created. ~~There is hereby created job~~ Job service North Dakota ~~which is herewith~~ charged with administering the ~~provisions of the~~ North Dakota Unemployment Compensation Law ~~and, the provisions of the~~ North Dakota state employment service, as set forth in chapter 52-08, ~~and title 65,~~ which must be administered by a full-time salaried executive director, who is subject to the supervision and direction of the governor. The governor is authorized to appoint, fix the compensation of, and prescribe the duties of such executive director, provided that such appointment must be made on a nonpartisan, merit basis, in accordance with ~~the provisions set forth in~~ chapter 54-42. The duties and responsibilities of the executive director extend to and include the power of full administration of the ~~provisions of the~~ North Dakota Unemployment Compensation Law, ~~and the provisions of~~ chapter 52-08 relating to the North Dakota state employment service, including job insurance programs, title 65, and the establishment and maintenance of free public employment offices and ~~of workers' compensation programs.~~ The executive director may also establish such separate divisions and make such separate appointments as ~~he may deem~~ the executive director determines advisable for efficient administration of the duties and responsibilities imposed hereunder. Any such separate appointments must be on a nonpartisan, merit basis.

SECTION 16. AMENDMENT. Section 52-08-03 of the North Dakota Century Code is amended and reenacted as follows:

52-08-03. Job service North Dakota - Offices maintained. The job service North Dakota executive director shall establish and maintain free public employment offices in ~~such sufficient~~ number and in ~~such~~ places as ~~may~~

be necessary for the proper administration of chapters 52-01 through 52-08 and title 65.

SECTION 17. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Introduction of bills and amendments - Actuarial impact statement. Beginning December 1, 1992, a legislative measure affecting workers' compensation benefits or premium rates may not be prefiled for introduction or introduced in either house of the legislative assembly unless the measure has been reviewed by the workers compensation bureau and the bureau has determined whether the measure will have an actuarial impact on the workers' compensation fund. If the bureau determines that the measure will have an actuarial impact on the fund, the measure may not be prefiled or introduced unless accompanied by an actuarial impact statement prepared, at the expense of the bureau, by the actuary employed by the bureau. No amendment affecting workers' compensation benefits or premium rates may be attached to any legislative measure unless the amendment is accompanied by either a statement prepared by the bureau, stating that the amendment is not expected to have any actuarial impact on the workers' compensation fund, or an actuarial impact statement prepared, at the expense of the bureau, by the actuary employed by the bureau.

SECTION 18. AMENDMENT. Subsection 1 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the office of management and budget reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Commissioner of insurance.
  - d. Attorney general.
  - e. Commissioner of agriculture.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.
  - i. State board of higher education.
  - j. Director of institutions.
  - k. Department of transportation.
  - l. State department of health and consolidated laboratories.

- m. Department of human services.
- n. ~~Workers compensation bureau.~~
- ~~o.~~ Director of the office of management and budget.
- ~~p.~~ o. State treasurer.
- ~~q.~~ p. Commissioner of labor.

SECTION 19. AMENDMENT. Section 54-16-10 of the North Dakota Century Code is amended and reenacted as follows:

54-16-10. Departmental emergency funds - Penalty. No moneys appropriated by the legislative assembly to be used for emergency purposes by any state department, state officer, employee, board, commission, bureau, or institution, including the Bank of North Dakota, mill and elevator association, fire and tornado, and bonding departments, ~~and the workers compensation bureau,~~ may be expended until such moneys so appropriated, or so much thereof as may be necessary for such appropriation, have been transferred to the subdivision of the regular appropriation in which the emergency exists. No ~~such~~ transfer of emergency funds, ~~hereinbefore~~ referred to, may be made until an itemized, verified petition, setting forth the facts by virtue of which such emergency exists and the necessity for such expenditure has been presented to the state emergency commission, by the department, state officer, board, commission, bureau, or institution desiring such transfer, and has been approved in writing by a majority of such commission. Any person who violates ~~the provisions of~~ this section is guilty of a class A misdemeanor.

SECTION 20. AMENDMENT. Section 54-56-01 of the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership. The children's services coordinating committee ~~is hereby established and~~ consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the executive director of job service North Dakota or a designee of the executive director, the director of institutions, the director of vocational education, the ~~chairperson~~ chairman of the governor's committee on children and youth, the executive director of the Indian affairs commission, and a designee of the chief justice. The governor or the governor's designee ~~shall act as chairperson~~ is the chairman of the committee.

SECTION 21. AMENDMENT. Subsection 4 of section 57-38-57 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The tax commissioner ~~is hereby authorized to may~~ furnish to ~~the workers compensation bureau,~~ to the job service North Dakota, or to the secretary of state, upon their request a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any

such list may be used only for the purpose of administering the duties of the requesting governmental unit.

SECTION 22. AMENDMENT. Section 57-39.2-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential. It is unlawful for the commissioner, or any person having an administrative duty under this chapter, to divulge, or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person or corporation visited or examined in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person except as provided by law. The commissioner may authorize examination of such returns by other state officers, and at his discretion furnish to the tax officials of another state, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed pursuant to this chapter, and in the report of an audit or investigation made with respect thereto, provided only that said information be furnished solely for tax purposes; and the multistate tax commission may make said information available to the tax officials of any other state and the United States for tax purposes.

The commissioner ~~is hereby authorized to may~~ furnish to the workers compensation bureau or to the job insurance division of job service North Dakota upon request of either a list or lists of holders of permits issued pursuant to the provisions of this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of such permit holders; provided, that any such list shall be used by the bureau to which it is furnished job service North Dakota only for the purpose of administering the duties of such bureau job service North Dakota. The commissioner, or any person having an administrative duty under this chapter, is hereby authorized to may announce that a permit has been revoked.

\* SECTION 23. AMENDMENT. Section 65-01-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. ~~Whenever used in~~ In this title:

1. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
2. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. ~~Eyeglasses~~ The term does not include eyeglasses or contact lenses are not artificial members unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
3. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury. The term does not include:

\* NOTE: Section 65-01-02 was also amended by section 1 of House Bill No. 1324, chapter 713, and by section 30 of Senate Bill No. 2068, chapter 54.



- a. Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;
  - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;
  - c. All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;
  - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury;
  - e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;
  - f. Home gym or exercise equipment unless the bureau otherwise orders;
  - g. Memberships or monthly dues to health clubs, unless the bureau orders otherwise;
  - h. Private hospital or nursing home rooms except in cases of extreme medical necessity, and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;
  - i. Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and
  - j. Aids or programs primarily intended to help the employee lose weight or stop smoking.
4. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
  5. "Brother" and "sister" includes a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption, but such terms shall. The terms do not include a married brother or sister unless he or she actually is dependent.
  6. "Bureau" means the job service North Dakota workers compensation bureau, or any director, department heads, assistants, or employees, or other entity designated by the commissioners director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.
  7. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation

of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.

8. "Compensable injury" means an injury by accident arising out of and in the course of employment.
  - a. The term "compensable injury", in addition to an injury by accident, includes:
    - (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
    - (2) An injury to artificial members.
    - (3) Injuries due to heart attack, stroke, and mental or physical injury precipitated by mental stimulus, which must be causally related to the ~~worker's~~ employee's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
    - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
    - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
  - b. The term "~~compensable injury~~" does not include:
    - (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.

- (2) Any injury caused by the use of narcotics or intoxicants.
  - (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.
  - (4) An injury that arises out of the commission of an illegal act by the injured employee.
  - (5) An injury that arises out of an employee's purely voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
  - (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. However, it is insufficient to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such employment trigger, unless the employment trigger is also deemed a substantial aggravating or accelerating factor. An underlying condition is preexisting injury, disease, or infirmity.
  - (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
  - (8) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a nonemployment injury.
  - (9) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except such action that is the intentional infliction of emotional harm.
9. "Date of first disability" and "loss of earnings date" mean the first full date the employee was unable to work in relation to a compensable injury. ~~This term does~~ These terms do not apply to recurrent disabilities.
  10. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
  11. "Director" means the executive director of the bureau.

12. "Disability" means that period of time an employee is totally or partially incapacitated from:
- a. Performing employment at any suitable gainful employment or occupation for which the employee is reasonably suited by experience or training;
  - b. Earning in the same or any other employment the wages the employee was receiving at the time of injury loss of earnings capacity and may be permanent total, temporary total, or partial.
  - a. Permanent total disability is permanent in nature and total in character, and is paid to an employee who is not capable of rehabilitation of earnings capacity, which depend upon the following factors:
    - (1) Nature of injury;
    - (2) Degree of physical impairment;
    - (3) Age;
    - (4) Education;
    - (5) Work history; and
    - (6) Vocational rehabilitation potential.
  - b. Temporary total disability is total in character but temporary in nature and is paid to the employee until maximum medical recovery with work release to any occupation for which the employee is reasonably suited by aptitude, education, experience, or training.
  - c. Partial disability exists when the following are present and must be paid pursuant to section 65-05-10:
    - (1) The employee has a permanent physical inability to perform certain work;
    - (2) The employee is able to do some work subject to the disability;
    - (3) The employee has an actual loss of earning capacity that is causally related to the disability; and
    - (4) The employee has not undergone training under chapter 65-05.1.
13. "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
14. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

- a. The term includes:
- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
  - (2) Aliens.
  - (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
  - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor worker, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.
- b. The term does not include:
- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
  - (2) Any person who is engaged in an illegal enterprise or occupation.
  - (3) The spouse or child of the employer dwelling in the household of the employer.
- c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.
15. "Employer" means:
- a. The state and all political subdivisions thereof.
  - b. All public and quasi-public corporations in this state.
  - c. Every person, partnership, association, and private corporation, including a public service corporation.
  - d. The legal representative of any deceased employer.

- e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.
  - f. The president, vice presidents, secretary, or treasurer of a business corporation.
16. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.
  17. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
    - a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
    - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
    - c. Can be fairly traced to the employment;
    - d. However, any condition or impairment of health of a full-time paid fireman firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid fireman firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid fireman firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid fireman firefighter. A full-time paid fireman firefighter or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid fireman firefighter or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.
  18. "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.
  19. "Fund" means the North Dakota workers' compensation fund.
  20. "Grandchild" and the terms defined in subsections 4 and 6 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.

21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
  - a. Agricultural or domestic service.
  - b. Any employment of a common carrier by railroad.
  - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
  - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
23. "Orphan" means a child who has no lawful parent.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.
26. "Premises" means that part of the employer's property upon or in which the employee is expected to perform services for his employer.
- ~~27.~~ "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. Such services The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
- ~~28.~~ 27. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~29.~~ 28. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of

health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.

~~30-~~ 29. "Wages" means all remuneration payable in money or a substitute for money for services rendered by an employee.

a. The term "~~wages~~" includes:

- (1) The actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent, or housing and per diem is lost as a result of the injury.
- (2) Commissions and bonuses.
- (3) Extra wages for any and all overtime work.
- (4) Wages or salary paid during holidays, vacations, or sickness periods.
- (5) Gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the internal revenue service.
- (6) Wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to compensable injury.
- (7) Unemployment insurance benefits and workers' compensation temporary total disability benefits paid to the injured ~~worker~~ employee during the twelve months preceding the month of injury will be taken into account when computing the average weekly gross earnings in cases where there are special circumstances under which the average gross weekly earnings cannot be determined.

b. The term "wages" does not include:

- (1) Severance pay.
- (2) The cash value of health, medical, life, or other insurance benefits or retirement benefits.
- (3) Social security benefits.
- (4) Passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts.

~~31-~~ 30. "Gross weekly wage" means the weekly wages the ~~worker~~ employee was receiving from all employments at the time of injury. The average



weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the ~~worker's~~ employee's wages are not fixed by the week, they must be determined in the following manner:

- a. Hourly or daily rate multiplied by number of hours or days worked per seven day week;
- b. Monthly rate multiplied by twelve months and divided by fifty-two weeks;
- c. Biweekly rate divided by two;
- d. If the weekly earnings of an employee cannot be ascertained, the wage for the purposes of calculating compensation must be taken to be the usual wage paid other employees engaged in like or similar occupations where the wages are fixed; or
- e. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through d, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked, whichever is less.

~~32. Any term includes the singular and plural and either or both sexes where the context so requires.~~

SECTION 24. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or ~~his~~ the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund ~~shall be~~ is subrogated to the rights of the injured employee or ~~his~~ the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or ~~his~~ the employee's dependents in the event of ~~his~~ the employee's death. Such action shall be brought in ~~his~~ the injured employee's or in ~~his~~ the employee's dependents' own right and name and as trustee for the ~~workmen's compensation~~ bureau for the subrogation interest of the bureau. If the injured employee or ~~his~~ the employee's dependents do not institute suit within sixty days after date of injury the bureau may bring the action in its own name and as trustee for the injured employee or ~~his~~ the employee's dependents and retain as its subrogation interest the full amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or ~~his~~ the employee's dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in ~~his~~ the employer's own name or in the name of the employee, or both, and

in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or ~~his~~ the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. ~~Should If there be is~~ is no recovery of damages in the action, this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action, the costs of the action, exclusive of attorneys fees, ~~shall must~~ must be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.
2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.
3. Thirty-three and one-third percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the bureau in writing the name and address of ~~his~~ the employee's attorney, and that ~~he~~ the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest ~~shall be is~~ is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or ~~his~~ the employee's dependents, and no costs or attorney fees will be paid from the bureau's subrogation interest.

SECTION 25. AMENDMENT. Section 65-01-10 of the North Dakota Century Code is amended and reenacted as follows:

65-01-10. Waiver of rights to compensation void - Deduction of premium from employee prohibited - Penalty. No agreement by an employee to waive ~~his~~ his rights to compensation under ~~the provisions of~~ this title shall be is valid except as provided in section 65-05-25. No agreement by any employee to pay any portion of the premium paid or payable by ~~his~~ the employer into the fund ~~shall be is~~ is valid, and any employer who deducts any portion of such premium from the wages or salary of any employee entitled to the benefits of this title is guilty of ~~an infraction~~ a class A misdemeanor.

SECTION 26. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Informal decision by bureau. Notwithstanding sections 28-32-05, 28-32-08, and 28-32-13, the following procedures must be followed when a claim for benefits or reapplication for benefits is made under this title:

1. All claims must be filed on forms furnished by the bureau for that purpose.

2. Upon filing of a claim, including the claimant's statement and physician's certificate, the bureau shall send a copy of the claim, along with a form provided for the employer's response by regular mail, to the employer, if the employer's response is not filed at the time the claim is filed.
3. The employer has thirty days from the day a copy of the claim is mailed to the employer by the bureau to file or mail a response. Failure of the employer to file a response to the claim within thirty days constitutes an admission by the employer that the allegations stated in the claim form are true. The bureau may reopen a determination made without an employer's report on its own motion, pursuant to section 65-05-04, on the grounds it deems sufficient.
4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to them by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than ninety days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed, the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration.
5. The bureau may hold informal proceedings to determine any matter subject to its jurisdiction. The bureau shall issue to the parties a notice of decision, including a short statement or summary indicating the reason for the decision, and notice of the right to request reconsideration as provided by this section. The bureau may convene a formal hearing prior to issuing an administrative order, if the bureau so desires.
6. After acceptance of a claim, the bureau may continue to pay medical charges, disability benefits, or a vocational award for time loss without issuing notice of award.
7. The bureau shall issue an administrative order under chapter 28-32 when it makes a permanent partial impairment award or a vocational award, terminates or denies disability or vocational services, or has otherwise been requested to issue an administrative order by an aggrieved party by filing a request for reconsideration of its informal decision.

SECTION 27. AMENDMENT. Section 65-02-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-06. Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance. The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of this title. The salaries and compensation of the director of the bureau and of all employees of the bureau, and all other authorized expenses thereof, including the premium on the bond required of the state treasurer under section 65-04-30, must be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of the assistant.

SECTION 28. AMENDMENT. Section 65-02-07 of the North Dakota Century Code is amended and reenacted as follows:

65-02-07. Bureau to have seal. The bureau shall have a seal for the purpose of authentication, whenever authentication is required, upon which seal shall be inscribed the words "Workers' Compensation Bureau - Job Service North Dakota - Seal".

SECTION 29. AMENDMENT. Section 65-02-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall ~~make, promulgate, and enforce~~ adopt such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant must be in accordance with schedules of fees adopted or to be adopted by the bureau. Fee schedules for medical and hospital services must incorporate cost-saving measures and must be submitted to and approved by the committee on administrative rules before submission to the legislative council for publication. The bureau shall establish, by administrative rule, an hourly rate to compensate claimants' attorneys for legal services following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits. "Constructive denial" means delay in payment, failure to issue an administrative order, or failure to act within ninety days of the date when all elements of filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. The bureau shall establish, by administrative rule, a reasonable maximum fee for each stage of the proceedings, provided further that the maximum fee may be exceeded upon application of the claimant and approval of the bureau, which may not be unreasonably denied, upon a finding that the claim has clear and substantial merit and additional fees are warranted because the legal or factual issues involved in the dispute are unusually complex. The bureau may also provide, by administrative rule, an hourly fee for legal assistants or paraprofessionals, and fees for court reporters. The bureau may establish reasonable rules governing payment of fees, required fee statements, billing practices, reimbursement for costs, and other necessary rules governing payment for legal services not inconsistent with the provisions of this title. All attorneys' fees and costs must be paid from the bureau general fund. Nothing provided herein may be construed to prevent a claimant or employer from hiring or paying his or her own attorney; however, the

claimant's attorney may not seek or obtain costs or attorney's fees from both the bureau and the claimant relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney, one member selected by the bureau, and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.

SECTION 30. Four new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

Workers' compensation binding arbitration panel - Membership. The bureau shall establish four regional listings of persons who may serve as arbitrators for workers' compensation proceedings. Each regional listing must contain an equal number of names submitted to the director by an organization, statewide in scope, which, through its affiliates, embraces a cross section and a majority of the organized labor of the state; an equal number of names submitted to the director by a recognized statewide organization of employers, representing a majority of employers; and a similarly equal number of names selected by the bureau from applications by interested persons throughout the state who demonstrate the unique ability, experience, and qualifications to serve as arbitrators. Each list must be revised every three years. The people whose names appear on a regional listing must reside in that region. When a disputed claim is submitted for binding arbitration, the employee shall select a name from the appropriate regional list that was submitted by the labor organization; the employer shall select a name from the appropriate regional list that was submitted by the statewide organization of employers or shall designate the bureau to do so; and the selected employee and employer representatives shall select a name from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. The appropriate region is the region in which the employee resides. If the employee resides out of state, the appropriate region is the region of the situs of employment. As an alternative selection procedure, by mutual agreement, the employee and the employer may designate themselves as the employee and employer representatives on the panel and together shall select the third panel member from the appropriate regional list of those individuals who have been selected to serve as arbitrators based upon their experience and ability. Panel members are entitled to remuneration for their services at a rate set by the bureau and to travel expenses at the rate in effect for state employees. The bureau shall provide staff services to the panel members. The salaries and expenses of the panel must be paid from money appropriated to the bureau for that purpose.

Removal of a panel member. The director may remove a member of the workers' compensation binding arbitration panel for cause.

Binding arbitration panel - Attorneys' fees. Following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits, an aggrieved employee may request that the action be submitted to binding arbitration before the workers' compensation binding arbitration panel in lieu of a formal administrative hearing or judicial remedy. The bureau shall pay, at an hourly rate established by the bureau, a claimant's attorneys' fees on claims submitted for binding

arbitration. If the aggrieved employee elects not to submit the action to binding arbitration, attorneys' fees may only be paid if the employee prevails.

Administrative orders - Decisions of binding arbitration panel - Appeals. An appeal of an administrative order is subject to section 28-32-14. A decision of the workers' compensation binding arbitration panel is final and nonreviewable by a district court, except as provided in section 65-05-04.

SECTION 31. Three new sections to chapter 65-02 of the North Dakota Century Code are created and enacted as follows:

Bureau to contract for administrative services. The bureau shall contract for the services of a third-party administrator to monitor medical treatments of injured employees and to monitor the payment of medical expenses of all workers' compensation claims. The bureau shall solicit bids for administrative services within four months after the effective date of this Act and by December 1, 1991, shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

Bureau to establish managed care program. The bureau shall establish a managed care program with a third-party administrator to effect the best medical solution for an injured employee. The managed care system must allow for a third-party administrator to direct the program for medical care of the injured employee upon a finding by the bureau that the employee suffered a compensable injury. The managed care administrator shall operate according to guidelines adopted by the bureau to ensure that an injured employee receives appropriate medical treatment in a cost-effective manner. The managed care administrator shall assist the bureau in the medical management of claims within the bounds of workers' compensation law.

Contract for administration of managed care program. The bureau shall contract for the services of a third-party administrator to implement the managed care program. The bureau shall solicit bids for these administrative services within four months after the effective date of this Act. The solicitation must include a description of the program and the services expected of the managed care administrator. By December 1, 1991, the bureau shall award an administrative services contract to the bidder who will best serve the interests of the bureau and the employees under this title. The initial contract must begin January 1, 1992, and continue through June 30, 1993. Subsequent contracts must be for the period of a biennium. Subsequent solicitations must be made at least forty-five days before the expiration of an existing administrative services contract.

\* SECTION 32. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - Determination of premiums - Premium receipts and certificates to be mailed. Each employer subject to the provisions of this title shall pay into the fund annually the amount or premiums determined and fixed by the bureau for the employment or

\* NOTE: Section 65-04-04 was also amended by section 1 of House Bill No. 1321, chapter 716.

occupation of such employer, which amount shall be determined by the classifications, rules, and rates made and published by the bureau and shall be based on a proportion of the annual expenditure of money by such employer for the service of persons subject to the provisions of this title; provided, however, that the computation of such premiums shall not be based upon any premium wages in excess of the basic hourly rate of pay or any annual remuneration, in whatever form, in excess of the sum of thirty-six hundred dollars paid to any employee by any employer. A receipt or certificate specifying that such payment has been made shall be mailed to such employer by the bureau immediately after such payment is made, and such receipt or certificate, attested by the seal of the bureau, shall be prima facie evidence of the payment of the premium. Each employer shall report and submit premiums on a calendar year basis except as otherwise specified. Annual premium rate changes must be implemented on January first of each year. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of such entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates and for the purpose of effectuating such due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau.

SECTION 33. AMENDMENT. Section 65-04-10 of the North Dakota Century Code is amended and reenacted as follows:

65-04-10. Provision relating to compensation required in contractor's bonds. There ~~shall~~ must be inserted in every bond given by a contractor doing work for the state of North Dakota or for any political subdivision thereof, in addition to the general provisions for the faithful and complete performance of all work required under such contract, this further provision: That the ~~said~~ contractor has made, or will make, prior to the commencement of any work by ~~himself~~ the contractor or any subcontractor under such the contract, full and true report to the workmen's compensation bureau job service North Dakota of the payroll expenditures for the employees to be engaged in such the work, and that ~~he~~ the contractor has paid, or will pay, the premium thereon prior to the commencement of such the work.

SECTION 34. AMENDMENT. Section 65-04-13 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection. All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of the employers, must be open always for inspection by the bureau or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of ~~men employed~~ employees, and any other information as may be necessary for the uses and purposes of the bureau in its administration of this title. Refusal on the part of any employer to submit the employer's books, records, and payrolls for the inspection of the bureau, or of a traveling auditor, inspector, or assistant presenting written authority from the bureau, subjects the employer to a penalty of one hundred dollars for each offense, the same to be collected by civil action in the name of the state and paid into the fund to become a part thereof.

SECTION 35. AMENDMENT. Section 65-04-14 of the North Dakota Century Code is amended and reenacted as follows:

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based ~~shall be~~ is liable to the state in ten times the amount of the difference between the premium paid and the amount the employer should have paid. The liability to the state under this section ~~shall~~ must be enforced in a civil action in the name of the state, and all sums collected under the section ~~shall~~ must be paid into the fund. Any employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based is guilty of a class A misdemeanor.

\* SECTION 36. AMENDMENT. Section 65-04-15 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's reports confidential - Penalty if employee of bureau divulges information. The information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in an employer's report may be provided to a federal or state law enforcement agency pursuant to a lawful order of a court upon a showing of necessity and prior notice to the bureau of an application for the order. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Upon request, the bureau shall disclose the rate classification of an employer to the requester; however, the bureau may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The ~~workers compensation~~ bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list or lists of employers showing only the names, addresses, and ~~workers compensation~~ bureau file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 37. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

\* NOTE: Section 65-04-15 was also amended by section 6 of Senate Bill No. 2244, chapter 568.



65-04-20. Installment payment of premiums - Bond required. If the amount of premium billed to an employer on a pay-in-order is in excess of one hundred dollars, such premium may be paid in installments as follows:

1. If the employer is the state of North Dakota, or any department, industrial association, or political subdivision thereof, such premium may be paid in two equal semiannual installments at the option of the state, department, industrial association, or political subdivision, and no bond or undertaking shall be required to secure the payment of deferred premiums.
2. If the employer is other than one mentioned in subsection 1, such premium may be paid, at the option of the employer, in two equal semiannual installments or in four equal quarterly installments. ~~An employer wishing to pay premiums in installments under the provisions of this subsection shall file, on or before the due date of the first payment, the first payment and a satisfactory bond guarantying the payment of all deferred installments in the event of default and guarantying the payment of penalties and court costs in the event of default. A bond may cover one or more annual premiums specified in the pay-in-order, but if more than one year's premium is covered, the bond shall be a surety bond.~~

~~Interest shall must be charged at the same rate of nine percent per annum as earned by the investment of the fund based on the investment measurement review as of March thirty-first of each year and effective July first of each year and the interest charged may not be less than six percent per annum. Such rate must be charged on all premiums deferred under the provisions of this section, and upon default in payment of any installment such installment shall carry penalties as provided in this chapter.~~

SECTION 38. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership of a corporation that is an employer under this title who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums under this title, and who fails to file the reports or to make payments as required, is personally liable for premiums or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the bureau those amounts for which the employer is liable.
2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation must be considered earned from the person determined to be personally liable.
3. After notice and opportunity for hearing, the bureau shall make a determination as to the personal liability under this section. A hearing must be requested within thirty days from the date of mailing of the notice. The determination is final unless the person found to be personally liable requests review by the bureau

within thirty days after mailing of the notice of determination to the person's last known address.

SECTION 39. AMENDMENT. Section 65-04-27.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-27.1. Injunctive relief - Procedure.

1. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the state workers' compensation insurance fund between all employers, and to protect the workers' compensation fund, the ~~workers compensation~~ bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title in any of the following instances:
  - a. When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of the provisions of section 65-01-05;
  - b. When the employer defaults in the payment of insurance premiums into the state fund; or
  - c. When the bureau, in exercise of the power and authority granted by section 65-03-01, giving it full power and jurisdiction over and the supervision of, every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations, finds that it is necessary to enjoin and restrain certain employers and employments in order to protect the lives and safety of the employees because of failure or refusal to comply with necessary and proper safety rules and regulations.

The courts of this state are vested with jurisdiction and power to grant such preventive relief in the instances herein set forth.

2. The provisions of chapter 32-06 relating to injunction shall apply to proceedings instituted hereunder in so far as such provisions may be applicable.
3. In addition to the provisions of chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the defendant employer shall be entitled to have a hearing by the court on the merits of the case without delay and upon three days' written notice to the ~~workers compensation~~ bureau the court shall then proceed to hearing on the merits and render its decision.
4. In addition to the provisions of chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired either party shall be entitled to have a hearing by the court on the merits of the case and upon ten days' notice by either party to the other the court shall then proceed to hearing on the merits and render its decision.

SECTION 40. AMENDMENT. Section 65-04-29 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option. Any employer carrying on any employment not defined as hazardous under section 65-01-02 who complies with this title and who pays into the fund the premiums provided for under this chapter is covered under the fund and is not liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under workers' compensation insurance may do so by notifying the ~~workers compensation~~ bureau and the employer of such election in writing.

SECTION 41. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Employer required to pay bureau for certain claims. The employer shall reimburse the bureau for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. Upon the bureau's determination that the claim is compensable, the bureau shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the bureau within ninety days of notice by the bureau, the bureau may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after June 30, 1991.

SECTION 42. Two new subsections to section 65-05-07 of the 1989 Supplement to the North Dakota Century Code are created and enacted as follows:

If a doctor or health care provider who has treated or provided services to an injured employee fails or refuses without just cause to file with the bureau a report required by sections 65-05-02, 65-05-08, or 65-05-08.1, within thirty days of examination, treatment, or provision of other services rendered in connection with a compensable work injury, or within thirty days of a request for such report made by the claimant, the claimant's representative, or the bureau, the bureau shall assess as a penalty a sum of one hundred dollars. Health care providers or doctors may not bill injured workers for any penalty assessed by the bureau as a result of failure or refusal without just cause to file a required report.

The filing of an accident report or the rendering of treatment to an injured worker who comes under the bureau's jurisdiction, as the case may be, constitutes acceptance of the bureau's medical aid rules and compliance with its rules and fees.

SECTION 43. AMENDMENT. Section 65-05-08 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Compensation not paid unless period of disability is of five days' duration or more - Application required. No compensation ~~will~~ may be paid for total or partial disability, the duration of which is less than five consecutive calendar days. If the period of total or partial disability is of five consecutive calendar days' duration or more, compensation ~~shall~~ must be paid ~~during such~~ for the period of disability providing provided that:

1. If the period of disability is for not more than fourteen days, disability benefits for the first five days may only be paid for days that the employee was scheduled to work.
2. When partial or total disability benefits are discontinued, the claimant shall provide the bureau written notice of reapplication for disability benefits. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon a finding that:
  - a. The employee has sustained a significant change in medical condition shown by a preponderance of the evidence;
  - b. The employee has provided evidence of actual wage loss attributable to the work injury; and
  - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
- ~~2. A health care provider or physician may not certify or verify past disability unless the health care provider or physician has examined the employee within the previous sixty days and filed those reports required by this title. A health care provider or physician certifying disability shall include in the report the basis for the certification of disability and a professional opinion as to the expected length of, and reason for, the disability.~~
3. All payments of benefits must be suspended during the period of confinement of any ~~worker~~ employee who is eligible for, or receiving, benefits under this title who is confined in any institution under conviction and sentence unless the ~~worker~~ employee is receiving permanent total disability benefits or the bureau has determined that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and the employee has a spouse or child, in which case the benefits must be paid directly to such spouse or child. After discharge from the institution, payment of benefits thereafter due must be paid as the ~~worker~~ employee would, but for the provisions of this subsection, otherwise be entitled.
4. Any ~~worker~~ employee who is eligible for, or receiving, disability benefits under this title shall report any wages earned, from part-time or full-time employment, from the employer of injury or any other employer. Failure to report such wages earned requires the ~~worker~~ employee to refund to the bureau any partial or total disability benefits overpaid by the bureau for that time period.

To facilitate recovery, the bureau may offset future benefits otherwise payable, under section 65-05-29. If the bureau determines that the failure to report wages earned was willful, the employee forfeits all further lost-time benefits otherwise payable under this title for that injury pursuant to section 65-05-33.

5. An employee shall request disability benefits on a lost-time claim form furnished by the bureau. In no case may lost-time benefits commence more than one year prior to filing of the initial lost-time claim form.
6. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, ~~1989~~ 1991, irrespective of injury date.

SECTION 44. Section 65-05-08.1 of the North Dakota Century Code is created and enacted as follows:

65-05-08.1. Verification of temporary total disability.

1. The claimant's doctor shall certify the period of temporary total disability upon request of the bureau.
2. A doctor certifying disability shall include in the report filed with the bureau:
  - a. The medical basis for the certification of disability;
  - b. Whether the employee is totally disabled, from any and all employment, or whether the employee is able to return to some employment, including light work or sedentary work;
  - c. If the employee is not totally disabled, a statement of the employee's restrictions and physical limitations; and
  - d. A professional opinion as to the expected length of, and reason for, the disability.
3. The report must be filed on a form furnished by the bureau, or on any other form acceptable to the bureau.
4. The claimant shall ensure that the required reports are filed.
5. Prior to expiration of a period of temporary total disability certified by a doctor, if a report certifying an additional period of disability has not been filed, the bureau shall send a notice to the claimant of intention to discontinue benefits, the reason therefor, and an explanation of the right to respond and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the claimant's doctor. Thereafter, if the required certification is not filed, the bureau shall discontinue temporary total disability benefits by formal order, effective no sooner than twenty-one days after the date of notice of intention to discontinue benefits is mailed.

6. Upon receipt of a report or other evidence indicating a claimant who is receiving temporary total disability benefits has been or will be released to return to work, the bureau shall issue and mail to the claimant a notice of intention to discontinue benefits. Such benefits may thereafter be discontinued on the date of release to return to work or twenty-one days following mailing of the notice, whichever is later. The notice must include a statement of the reason for the action, a brief summary of the evidence relied upon by the bureau, and an explanation of the right to respond and the procedure for challenging the action and submitting additional evidence to the bureau.

SECTION 45. AMENDMENT. Section 65-05-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate compensation. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the gross weekly wage of the claimant, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the bureau benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the bureau benefit rates shall be those in effect at the time of that recurrence.
2. In case of permanent total or temporary total disability, there must be paid to such disabled employee an additional dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.
3. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.
4. In no case may the compensation or combined compensation and dependency award exceed the weekly wage of the employee after deductions for social security and federal income tax.
5. When an employee who is permanently and totally disabled and must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, part or all of that employee's weekly compensation may be used by the bureau to help defray the cost of such care.

SECTION 46. Section 65-05-09.3 of the North Dakota Century Code is created and enacted as follows:

65-05-09.3. Retirement presumption. An employee who has retired or voluntarily withdrawn from the labor force is presumed retired from the labor

market and is ineligible for receipt of disability benefits under this title. The presumption may be rebutted by a preponderance of the evidence that the worker:

1. Is actively seeking employment;
2. Is available for gainful employment;
3. Has not rejected any job offer made by a former employer, or other bona fide job offer by another employer; and
4. Has not provided the employer, upon written request, with written notice of a scheduled retirement date.

The presumption does not apply to any employee who is permanently and totally disabled as defined under this title.

SECTION 47. AMENDMENT. Section 65-05-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly compensation. If the injury causes temporary partial disability resulting in decrease of earning capacity, the compensation is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. However, the partial disability benefits may not exceed an amount equal to sixty-six and two-thirds percent of the employee's average weekly wage at the time of the injury benefit rates as defined in section 65-05-09.

1. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury, is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
2. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, such employee is not entitled to any compensation at any time during the continuance of such refusal unless, at any time, such refusal is justified in the opinion of the bureau.
3. No compensation is payable unless the loss of earning ~~power~~ capacity exceeds ten percent. The claimant may earn up to ten percent of the claimant's average gross weekly earnings with no reduction in total disability benefits.
4. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received on an annual basis. The injured employee shall notify the bureau whenever there is a change in wages received.
5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning ~~power~~ capacity occurs after July 1, 1989. Partial loss of earning ~~power~~

- capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.
  7. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
  8. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 48. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Permanent impairment. When there is a dispute as to the percentage of an employee's permanent impairment, all medical evidence must be submitted to an independent physician who has not treated the employee or who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a comprehensive list of physicians who are medical specialists within the state. The bureau and the claimant shall choose a physician to review a disputed permanent impairment rating by striking names from the list until a name is chosen. The decision of the independent physician is presumptive evidence of the degree of permanent impairment of the employee.

SECTION 49. AMENDMENT. Section 65-05-25 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~65-05-25. Lump sum settlement - Granted in discretion of bureau - How computed. The bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation. The bureau and the claimant, after an opportunity to seek legal counsel, may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation must be determined by reference to generally accepted mortality studies. In case of the spouse of a deceased employee, the lump sum may not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation must be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also~~



grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the bureau, reversing it, or remanding it back to the bureau with instructions.

1. If an employee is determined to be permanently and totally disabled, the bureau may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is entitled to compensation must be determined by generally accepted mortality studies. The bureau may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return to work as a productive member of society.
2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is applicable.

SECTION 50. AMENDMENT. Section 65-05-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the bureau may require the employee to begin treating with another doctor, to better direct the medical aspects of the injured employee's claim. The bureau shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the bureau's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of that employee's the doctor or health care provider who is treating the employee as chosen by the employee at the request of the bureau, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the bureau. Failure to obtain approval of the bureau renders the employee liable for the cost of treatment and the new doctor will not be considered the attending doctor for purposes of certifying temporary disability.
  - a. Any employee requesting a change of doctor shall file a written request with the bureau stating all reasons for the change.

Upon receipt of the request, the bureau will review the employee's case and approve or deny the change of doctor, notifying the employee and the requested doctor.

- b. Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the bureau.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the bureau reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:
    - a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
    - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the bureau may pay no more than actual cost of meals and lodging, if actual cost is less;
    - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
    - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children, or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and
    - e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
  3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified doctor or doctors designated or approved by the bureau. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified doctor designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
    - a. In case of any disagreement between doctors making an examination on the part of the bureau and the employee's doctor, the bureau shall appoint an impartial doctor duly qualified who shall make an examination and shall report to the bureau.

- b. The employee, in the discretion of the bureau, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 51. AMENDMENT. Section 65-05-33 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statements - Penalty. Any person claiming benefits or payment for services under this title, who willfully files a false claim or makes a false statement, or willfully fails to notify the bureau as to the receipt of income, or an increase in income, from employment, after the issuance of an order awarding benefits, in connection with any claim or application under this title is guilty of a class ~~B~~ A misdemeanor. Provided further that:

1. For the purposes of this section, ~~the term~~ "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test results, or other evidence of loss, injury, or expense.
2. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall:
  - a. Reimburse the bureau for any benefits paid based upon the false claim or false statement, and if applicable, under section 65-05-29.
  - b. Forfeit any additional benefits relative to that injury.

SECTION 52. Section 65-05-34 of the North Dakota Century Code is created and enacted as follows:

65-05-34. False statement on employment application. A false statement in an employment application made by an employee bars all benefits under this title if:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition;
2. The employer relied upon the false representation and this reliance was a substantial factor in the hiring; and

3. There was a causal connection between the false representation and the injury.

SECTION 53. Section 65-05-35 of the North Dakota Century Code is created and enacted as follows:

65-05-35. Inactive claim - Presumption.

1. A claim for benefits under this title is presumed inactive if:
  - a. A doctor's report has been filed indicating the employee has reached maximum medical recovery; and
  - b. The bureau has not paid any benefit or received a demand for payment of any benefit for a period of four years.
2. A claim that is presumed inactive may not be reopened for payment of any further benefits unless the presumption is rebutted by a preponderance of the evidence. At a minimum, the employee shall present expert medical opinion that there is a causal relationship between the work injury and the current symptoms.
3. With respect to a claim that has been presumed inactive, the employee shall provide the bureau written notice of reapplication for benefits under that claim. In case of award of lost-time benefits, the award may commence no more than thirty days before the date of reapplication. In case of award of medical benefits, the award may be for medical services incurred no more than thirty days before the date of reapplication.

SECTION 54. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Bureau to adopt fee schedule. Unless the bureau has adopted fee schedules for medical and hospital services as required by section 65-02-08, the bureau, by February 1, 1992, shall adopt a fee reimbursement schedule for medical and hospital services and supplies for claims for workers' compensation. The amount of the fees for a specific medical or hospital service or supply set forth in the schedule adopted pursuant to this section must be equal to one hundred ten percent of the amount allowed for that medical or hospital service or supply under the urban hospital fee schedule of the medicare prevailing profile in effect at the time the service or supply is provided. The bureau shall establish a supplemental schedule to include any medical or hospital service or supply that is provided to injured employees and is not covered by the medicare prevailing profile. Any fee for a medical or hospital service or supply which is in excess of the amount allowed for that medical or hospital service or supply by the appropriate schedule under this section may not be recovered by the health care provider from the injured employee, the employer, or the bureau. A health care provider may charge a fee for a medical or hospital service or supply that is less than the fee allowed by the appropriate schedule. The fee schedules provided for in this section remain in effect until the bureau adopts fee schedules for medical and hospital services as required by section 65-02-08.

SECTION 55. AMENDMENT. Section 65-05.1-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

## 65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. It is the purpose of this chapter to provide for the health and welfare by ensuring to workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled ~~worker~~ employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, medical limitations, age, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the ~~worker~~ employee as soon as practical and as nearly as possible to the ~~worker's~~ employee's average weekly earnings at the time of injury, or to ~~seventy-five percent~~ of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 of section 65-05.1-04 which meets this income test.
4. The first appropriate option among the following, calculated to return the ~~worker~~ employee to substantial gainful employment, must be chosen for the ~~worker~~ employee:
  - a. Return to the same position.
  - b. Return to a modified position.
  - c. Return to a related occupation in the local job pool which is suited to the ~~worker's~~ employee's education, experience, and marketable skills.
  - d. Return to a related occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
  - e. On the job training.
  - ~~e- f.~~ Short-term retraining of fifty-two weeks or less.
  - ~~f- g.~~ Long-term retraining of one hundred four weeks or less.
  - ~~g- h.~~ Self-employment.

5. If the vocational consultant concludes that none of the priority options under subsection 4 of section 65-05.1-01 are viable, and will not return the employee to the lesser of seventy-five percent of the average weekly wage, or the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:

- a. That meets the employee's medical limitations;
- b. In which the employee meets the qualifications to compete; and
- c. Which will reasonably result in retained earnings capacity equivalent to the lesser of the employee's preinjury earnings or fifty percent of the average weekly wage in the state on the date the rehabilitation consultant's report is issued.

An award of partial disability due to retained earnings capacity under this section must be made pursuant to section 65-05-10.

~~5-~~ 6. By agreement between the bureau and the worker employee, the income test in subsection 3 and the priority options in subsection 4 may be waived.

~~6-~~ 7. Vocational rehabilitation services may be initiated by:

- a. The bureau on its own motion; or
- b. The worker employee or the employer if proof exists:
  - (1) That the claimant has reached maximum medical recovery;
  - (2) That the claimant is not working and has not voluntarily retired or removed himself from the labor force; and
  - (3) That the worker employee has made good faith efforts to seek, obtain, and retain employment.

~~7-~~ 8. The provisions of chapter 50-06.1 do not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 56. AMENDMENT. Section 65-05.1-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02. Bureau responsibility. The workers compensation bureau shall:

1. Appoint a director of rehabilitation services and such other staff as necessary to fulfill the purposes of this chapter.
2. Cooperate with such federal or state agency as shall be charged with vocational education, vocational rehabilitation, and job placement in order that any duplication of effort can be avoided, as far as possible, in any individual claim.

3. Make determinations on individual claims as to the extent and duration of the ~~workers compensation~~ bureau involvement under this chapter.
4. Enter into such agreements with other agencies and promulgate any rules or regulations as may be necessary or advantageous in order to carry out the purpose of this chapter.
5. Provide such rehabilitation services and allowances as may be determined by the bureau to be most beneficial to the worker within the limits of this chapter.
6. Establish medical assessment teams, the composition of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating physicians. The medical assessment team may consult the worker's treating physicians prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.
7. Appoint one or more vocational consultants, the identity of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's transferable skills, employment options, and the physical demand characteristics of the worker's employment options, and determining which option available under subdivisions a through f of subsection 4 of section 65-05.1-01 will enable the worker to return to employment within the physical restrictions and limitations provided by the medical assessment team. The vocational consultant shall issue to the bureau a report as provided in section 65-05.1-02.1.

SECTION 57. AMENDMENT. Section 65-05.1-02.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-02.1. Vocational consultant's report. The vocational consultant shall review all records, statements, and other pertinent information and prepare a report to the bureau and ~~worker~~ employee.

1. The report must:
  - a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
  - b. Contain findings of why a higher listed priority, if any, is not appropriate.
2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:
  - a. Identify jobs in the local or statewide job pool and the ~~worker's~~ employee's anticipated earnings from each job;

- b. Describe an appropriate on-the-job training program, and the ~~worker's~~ employee's anticipated earnings;
  - c. Describe an appropriate short-term or long-term retraining program, the employment opportunities anticipated upon the ~~worker's~~ employee's completion of the program, and the ~~worker's~~ employee's anticipated earnings; or
  - d. Describe the ~~worker's~~ employee's potential for specific self-employment, limitations the ~~worker~~ employee might have in such a self-employment, any assistance necessary, and the ~~worker's~~ employee's anticipated earnings.
3. The vocational consultant's report is due within sixty days from the initial referral for rehabilitation assessment under this chapter. However, where the vocational consultant determines that short-term or long-term training options must be evaluated because higher priority options are not viable, the final report is due within ninety days of the initial assessment to allow the employee to assist in formulating the choice among the qualified training programs.

SECTION 58. AMENDMENT. Section 65-05.1-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-04. Injured ~~worker~~ employee responsibility.

1. It shall be the responsibility of the ~~The injured worker to~~ employee shall seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum. ~~The worker~~ employee has the burden to establish that the ~~worker~~ employee has met this responsibility.
2. In the event that the injured ~~worker~~ employee is unable to obtain substantial employment as a direct result of ~~his~~ his injury ~~he,~~ he, the employee shall promptly notify the bureau under subdivision b of subsection 6 of section 65-05.1-01.
3. It is the responsibility of the ~~The injured worker to~~ employee shall be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary.
4. If the bureau determines that a program of rehabilitation is necessary and feasible, the injured worker, upon having been so notified, shall be available for such a program. Upon notification, with the appropriate assistance and testing from a vocational coordinator appointed by the bureau, the worker shall identify a specific qualified rehabilitation program within sixty days. A qualified rehabilitation program is a rehabilitation plan that meets the criteria of this title, and which is an approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 5 of section 65-05.1-01. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is return to the same or modified position, or return to related occupation, or on-the-job training, the employee



is responsible to make a good faith work trial or work search. If the employee fails to perform a good faith work trial or work search, the finding of nondisability or partial disability is res judicata, and the bureau may not reinstate total disability benefits or recalculate an award of partial disability benefits in the absence of a significant change in medical condition attributable to the work injury. However, the bureau shall recalculate the partial disability award if the employee returns, in good faith, to gainful employment. If the employee meets the burden of proving that the employee made a good faith work trial or work search and that the work trial or work search was unsuccessful due to the injury, the bureau shall reevaluate the employee's vocational rehabilitation claim. A good faith work search that does not result in placement is not, in itself, sufficient grounds to prove the work injury caused the inability to acquire gainful employment. The employee shall show that the injury significantly impacts the employee's ability to successfully compete for gainful employment in that the injury leads employers to favor those without limitations over the employee.

5. If the injured worker shall fail to comply with this section without a reasonable cause, the bureau, by administrative order, shall discontinue all lost-time benefits under this title during the period of noncompliance. If, upon the bureau order becoming final, the period of noncompliance shall continue for six months, the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits. If the first appropriate rehabilitation option under subsection 4 of section 65-05.1-01 is short-term or long-term training, the employee shall cooperate with the necessary testing to determine whether the proposed training program meets the employee's medical limitations and aptitudes. The employee shall attend a qualified rehabilitation training program when ordered by the bureau. A qualified training program is a rehabilitation plan that meets the criteria of this title, which is the approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 6 of section 65-05.1-01, and commences within a reasonable period of time such as the next quarter or semester.
6. If, without good cause, the injured employee fails to perform a good faith work trial in a return to the same or modified position, or in an on-the-job training program, or fails to make a good faith work search in return to work utilizing the employee's transferable skills, the employee must be deemed to be in noncompliance with vocational rehabilitation. If, without good cause, the injured employee fails to attend a scheduled medical or vocational assessment, or fails to attend a specific qualified rehabilitation program within ten days from the date the rehabilitation program commences, the employee must be deemed to be in noncompliance with vocational rehabilitation. If without good cause, the employee discontinues a job the employee is performing, or a training program in which the employee is enrolled, the employee must be deemed to be in noncompliance with vocational rehabilitation. If the employee establishes a pattern of noncooperation as heretofore described, involving two or more incidents of noncooperation, subsequent efforts by the employee to come into compliance with

vocational rehabilitation may not be deemed successful compliance until the employee has successfully returned to the job or training program for a period of sixty days. In all cases of noncompliance by the employee, the bureau, by administrative order, shall discontinue lost-time benefits. If, upon the bureau order becoming final, the period of noncompliance continues for sixty days, the bureau has no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or vocational rehabilitation benefits.

SECTION 59. AMENDMENT. Section 65-05.1-06.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. If the bureau determines that vocational rehabilitation is necessary and feasible, the bureau shall make an award of rehabilitation services by order, under chapter 28-32. Within sixty days of receipt of the final vocational consultant's report, the bureau shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to lost-time and vocational rehabilitation services. The bureau shall establish, by administrative rule, an hourly rate to compensate a worker's an employee's attorney from the date the bureau has notified the worker employee to identify a rehabilitation plan under section 65-05.1-04 be available for testing under subsection 7 of section 65-05.1-02. The bureau may establish, by administrative rule, absolute maximum fees for such representation.
2. The rehabilitation award must be within the following terms: If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
  - a. For the worker's employee's lost time, and in lieu of further temporary total, temporary partial, and permanent total disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the worker employee was receiving, or was entitled to receive, prior to the award.
  - b. The rehabilitation allowance must include an additional twenty-five percent while the worker employee maintains two domiciles, or meets other criteria established by the bureau by administrative rule.
  - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
    - (1) Paraplegia, quadraplegia, severe closed head injury, total blindness, or amputation of an arm or leg, which renders a worker an employee permanently and totally disabled without further vocational retraining assistance; or

- (2) Those ~~workers~~ employees the bureau so designates, in its sole discretion, provided that the bureau finds the ~~worker~~ employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from a bureau decision to designate, or fail to designate, a ~~worker~~ an employee as catastrophically injured under this subsection.
- d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the ~~worker~~ employee resides, provided an equivalent program exists in the public college or university.
- e. The rehabilitation allowance may be paid only during such time as the ~~worker~~ employee faithfully pursues vocational retraining. The rehabilitation allowance may be suspended during such time as the ~~worker~~ employee is not faithfully pursuing the training program, or has failed academically. If the work injury itself precludes the ~~worker~~ employee from continuing training, the ~~worker~~ employee remains eligible to receive disability benefits.
- f. In the event the ~~worker~~ employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- g. In the event the ~~worker~~ employee successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, an additional award, not to exceed two months disability benefit, to assist the ~~worker~~ employee with work search.
- h. If the ~~worker~~ employee successfully concludes the rehabilitation program, the ~~worker~~ employee is not eligible for further vocational retraining or total disability benefits unless the ~~worker~~ employee establishes a significant change in medical condition attributable to the work injury which precludes the ~~worker~~ employee from performing the work for which the ~~worker~~ employee was trained, or any other work for which the ~~worker~~ employee is suited. The bureau may waive the ~~provisions~~ of this section in cases of catastrophic injury defined by subdivision c of subsection 2.
- i. If the ~~worker~~ employee successfully concludes the rehabilitation program, the ~~worker~~ employee remains eligible to receive partial disability benefits, as follows:
- (1) Beginning the date at which the ~~worker~~ employee completes retraining, until the ~~worker~~ employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured ~~worker's~~ employee's average weekly wages before the injury, and the ~~worker's~~ employee's

- employee's wage-earning capacity after retraining, as measured by the average wage in the worker's employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the worker employee completes retraining. The benefit continues until the worker employee acquires substantial gainful employment, but in no case may exceed two years one year in duration.
- (2) Beginning the date at which the worker employee acquires substantial gainful employment in the field for which the worker employee was trained, or in a related occupation, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's average weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining.
  - (3) Beginning the date at which the worker employee acquires substantial gainful employment in an occupation unrelated to the worker's employee's training, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's employee's weekly wages before the injury, and the worker's employee's wage-earning capacity after retraining, as determined under paragraph 1 of this subdivision, or the worker's employee's actual postinjury wage earnings, whichever is higher.
  - (4) The partial disability benefit payable under paragraphs 1, 2, and 3 of this subdivision must be reduced so that the benefit and the worker's employee's earnings or calculated earnings capacity, together, do not exceed one hundred twenty-five percent of the average weekly wage in this state. For purposes of this subsection, the average weekly wage must be determined on the date the worker employee completes retraining or the date the worker employee acquires substantial gainful employment. The partial disability benefit so calculated is not subject to increase or decrease when the average weekly wage in this state changes.
  - (5) The partial disability benefits paid under paragraphs 1, 2, and 3 of this subdivision may not together exceed five years' one year's duration.
  - (6) For purposes of paragraph 1 of this subdivision, the date the worker employee completes retraining is defined as the date the worker employee is available for full-time work. ~~A worker~~ An employee cannot be deemed available for full-time work while the worker employee pursues education, unless such pursuit will in no way interfere with full-time work.

- (7) For purposes of paragraphs 1, 2, and 3 of this subdivision, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- (8) The bureau may waive the five year one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c of subsection 2.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is on-the-job training, the bureau shall pay the employee a lost-time benefit throughout the duration of the on-the-job training program. Upon completion of the training program, the bureau shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the bureau, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.

SECTION 60. A new section to chapter 65-05.1 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

Bids for vocational rehabilitation services. The bureau shall solicit bids from vocational rehabilitation vendors to provide services relative to vocational rehabilitation of claimants. The bureau shall contract with the lowest and best bidders to provide these services on an annual basis. The bureau shall determine the criteria that render a vocational rehabilitation vendor qualified. The request for bids must contain a detailed outline of services each vendor will be expected to provide. The accepted bid is binding upon both the bureau and the rehabilitation vendor. If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the bureau may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the bureau is not obligated to use that vendor for additional services on that claim and the bureau may refuse payment for a service that the vendor failed to perform which was a material requirement of the contract.

SECTION 61. AMENDMENT. Section 65-05.2-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-01. Eligibility for supplementary benefits. A workers' compensation claimant who was is receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, 1980, and is receiving such benefits as of July 1, 1985, and who has been receiving disability or death benefits for a period of ten consecutive

years or more as of June thirtieth of each year is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July ~~1, 1985~~, first of each year and lasts for as long as the claimant is entitled to ~~workers' compensation benefits~~ permanent total disability benefits or death benefits.

SECTION 62. AMENDMENT. Section 65-05.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount. Claimants who are eligible for supplementary benefits and who are receiving ~~temporary total disability benefits or~~ permanent total disability benefits are entitled to receive a weekly supplementary benefit ~~of such that, when added to their weekly permanent total disability benefit,~~ at least ~~one hundred sixty dollars per week~~ sixty percent of the state's average weekly wage on July first of each year is their combined benefit. Claimants who are eligible for supplementary benefits and who are receiving death benefits are entitled to receive a weekly supplementary benefit ~~of such that, when added to their weekly death benefit,~~ at least ~~one hundred dollars per week~~ fifty percent of the maximum death benefit on July first of each year is their combined benefit. In no case may the annual recalculation of supplemental benefits result in a rate less than the previous rate, notwithstanding an error in calculation. If a claim has been accepted on an aggravation basis pursuant to section 65-05-15 and the injured employee is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 63. AMENDMENT. Section 65-06-05 of the North Dakota Century Code is amended and reenacted as follows:

65-06-05. Reimbursement by state for liability in excess of premiums collected. Whenever liability on claims against the fund credited to the classification of volunteer disaster emergency trainees exceeds the amount of premiums paid into such fund, such excess liabilities shall be a general obligation of the state of North Dakota and be reimbursed to the ~~workmen's compensation~~ bureau for credit to ~~that~~ the workers' compensation fund by legislative appropriation.

SECTION 64. AMENDMENT. Section 65-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

65-06.1-04. State reimbursement for liability in excess of collected premiums. Whenever claim liability against the fund credited to the classification of civil air patrol members exceeds the amount of premiums paid into such fund, such excess liabilities shall be a general obligation of the state of North Dakota and shall be reimbursed to the ~~workmen's compensation~~ bureau for credit to ~~that~~ the workers' compensation fund through legislative appropriation.

SECTION 65. AMENDMENT. Subsection 4 of section 65-06.2-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If a former inmate receiving disability benefits under the provisions of this chapter is recommitted or sentenced by a court to imprisonment in a penal institution, the disability benefits

shall be suspended or paid during any confinement exceeding thirty consecutive days in the following manner:

- a. If the employee has no spouse or child, any right to claim disability benefits under this title during imprisonment shall cease and the term of confinement shall be deducted from the period for which disability benefits are payable to the employee.
- b. If the employee has a spouse or child, payment of disability benefits during the employee's imprisonment shall be paid to the spouse or child of the employee in the manner and in the amount provided in subsection 4 of section 65-05-17 are payable pursuant to subsection 3 of section 65-05-08.

\* SECTION 66. AMENDMENT. Section 65-08-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-02. Reciprocity in extraterritorial application of compensation acts of various states provided. An employee who is a resident of another state and the employer from another state is exempted from this title while such nonresident employee is temporarily within this state doing work for the nonresident employer:

1. If that employer has furnished to such employee workers' compensation insurance under the Workers' Compensation Act, or any similar act, of such other state, covering such employee's employment in this state.
2. If the extraterritorial coverage furnished by this title and granted to employers resident in this state covering employment of employees while working in such other state is recognized by such other state.
3. If the employers and employees resident in this state who are covered by this title are likewise exempted from the application of the Workers' Compensation Act, or any similar act, of such other state.

If the annual payroll expended within this state by a nonresident employer exceeds one thousand dollars then the out-of-state employer may no longer be considered as operating in this state on a temporary basis, unless there is an agreement between the North Dakota workers compensation bureau and a similar and a workers' compensation agency of the other state where the employer is a resident, and such agreement provides otherwise.

The benefits under the Workers' Compensation Act or similar laws of the other state, or other remedies under a like act or laws are the exclusive remedy against the employer for any resulting injury or death suffered by such employee while working for that employer in this state.

SECTION 67. AMENDMENT. Section 65-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

65-11-04.1. Mine foremen - Rules regarding. The ~~workmen's compensation~~ bureau may ~~promulgate, issue,~~ adopt and enforce all necessary

- \* NOTE: Section 65-08-02 was repealed by section 2 of House Bill No. 1370, chapter 718.

and proper rules for the qualification, examination, and certification of mine foremen.

\* SECTION 68. AMENDMENT. Section 65-11-06 of the North Dakota Century Code is amended and reenacted as follows:

65-11-06. Removal of safety engineer. If the ~~workmen's compensation~~ bureau finds that the safety engineer is negligent in ~~his~~ the engineer's duties, is incompetent to perform the same or is guilty of malfeasance or misfeasance in office, the bureau shall declare the office of safety engineer vacant and shall proceed in compliance with ~~the provisions of~~ this title to fill the vacancy.

\*\* SECTION 69. AMENDMENT. Subsection 4 of section 65-12-02 of the North Dakota Century Code is amended and reenacted as follows:

4. The ~~workmen's compensation~~ bureau shall establish qualifications for deputy inspectors.

SECTION 70. AMENDMENT. Subsection 4 of section 65-12-03 of the North Dakota Century Code is amended and reenacted as follows:

4. Cooperate and assist in all accident prevention programs sponsored by the ~~workmen's compensation~~ bureau.

SECTION 71. AMENDMENT. Section 65-12-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-04.1. Exempt boilers - Inspection of exempt boilers. Nothing in this chapter shall be construed to apply to:

1. Boilers subject to federal inspection or under federal control.
2. Boilers located on farms and used solely for agricultural purposes.
3. Heating boilers which are located in private residences or in apartment houses of less than six family units.
4. Hot water supply boilers with not more than two hundred thousand British thermal units per hour input and pressure not exceeding one hundred sixty pounds [72.57 kilograms] per square inch [6.45 square centimeters] gauge or temperatures not exceeding two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Portable steam cleaners of the type in common use in garages.
6. Boilers of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby and not for commercial use having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which are properly equipped with a safety valve, water level indicator, and pressure gauge.

Any exempt boiler may be inspected by the chief boiler inspector when the owner, his agent, or the user of such boiler makes written request for inspection to the ~~North Dakota workers compensation~~ bureau.

\* NOTE: Section 65-11-06 was repealed by section 2 of Senate Bill No. 2167, chapter 719.

\*\* NOTE: Section 65-12-02 was also amended by section 2 of Senate Bill No. 2166, chapter 720.



Fees shall be imposed as provided in section 65-12-11 for inspections done pursuant to this chapter.

SECTION 72. AMENDMENT. Section 65-12-08 of the North Dakota Century Code is amended and reenacted as follows:

65-12-08. ~~Rules and regulations and penalty~~ - Penalty for violation - Hearing. The bureau shall ~~promulgate adopt rules and regulations~~ for the safe and proper installation, use, operation, and inspection of boilers subject to this chapter. The bureau shall not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with such rules ~~and regulations~~. The bureau shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules ~~and regulations~~.

Any owner or user of a boiler may request a hearing before the ~~workmen's compensation~~ bureau within fifteen days from service of an order refusing or revoking a certificate of inspection. It ~~shall be~~ is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period herein stated, the order of the bureau shall become final and not subject to further proceedings.

SECTION 73. AMENDMENT. Section 65-12-12 of the North Dakota Century Code is amended and reenacted as follows:

65-12-12. Disposition of funds. All funds collected and received under this chapter shall be paid to the state treasurer and deposited to the credit of the ~~workmen's workers'~~ compensation ~~bureau~~ fund. Any fee not paid within thirty days from the date of billing ~~shall be~~ is in default and may be collected in a civil action against ~~said~~ the defaulting party in the name of the state.

SECTION 74. AMENDMENT. Subsection 1 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means the ~~workers compensation~~ bureau.

SECTION 75. REPEAL. Sections 65-02-01, 65-02-01.1, and 65-02-02 of the 1989 Supplement to the North Dakota Century Code are repealed.

SECTION 76. LEGISLATIVE COUNCIL STUDY - JOB SERVICE AND WORKERS COMPENSATION CONSOLIDATION. The legislative council shall consider studying the feasibility and desirability of consolidating the workers compensation bureau with job service North Dakota and the amount required to be appropriated from the general fund to implement any consolidation. If a study is conducted, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations proposed, to the fifty-third legislative assembly.

SECTION 77. APPLICATION - EFFECTIVE DATE. Sections 55, 57, 58, and 59 of this Act apply to any rehabilitation award made on or after the effective date of this Act, irrespective of the date of injury. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 28, 33, and 75 of this Act and the amendment to subsections 6 and 11 of section 65-01-02 as provided by section 23 of this Act becomes effective on July 1, 1993.

Section 32 of this Act becomes effective on January 1, 1994. The remainder of this Act is retroactive to July 1, 1991. Any moneys needed to implement the consolidation of the workers compensation bureau and job service North Dakota must be appropriated out of the general fund, for that purpose, by the fifty-third legislative assembly.

Approved April 17, 1991  
Filed April 18, 1991

**CHAPTER 715**

SENATE BILL NO. 2146  
(Committee on Appropriations)  
(At the request of the Workers Compensation Bureau)

**WORKERS' COMPENSATION INFORMATION FUND**

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to the establishment of an information fund for the workers compensation bureau; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Information fund - Continuing appropriation. There is hereby created a fund to be known as the information fund. The workers compensation bureau shall deposit into this fund all moneys received from private citizens, businesses, associations, and corporations for providing these entities with publications and statistical information concerning workers' compensation matters. The information must be provided at cost. The moneys in the fund are appropriated, as a standing and continuing appropriation, to the workers compensation bureau to pay publication and statistical processing expenses incurred by the bureau. If on the first day of July in any year the amount of money in the information fund is more than ten thousand dollars, the amount in excess of ten thousand dollars must be transferred to the bureau's general fund.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 716

HOUSE BILL NO. 1321  
(Representatives Dalrymple, Bernstein)  
(Senators Stenehjem, Meyer)

### WORKERS' COMPENSATION PREMIUMS

AN ACT to create and enact a new section to chapter 65-04 of the North Dakota Century Code, relating to calculation of employer's premiums; to amend and reenact section 65-04-04 of the North Dakota Century Code, relating to the basis for establishing workers' compensation premiums; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 65-04-04 of the North Dakota Century Code is amended and reenacted as follows:

65-04-04. Employers obligated to pay premiums - ~~Determination of premiums~~— Premium receipts and certificates to be mailed. Each employer subject to ~~the provisions of~~ this title shall pay into the fund annually the amount ~~or of~~ premiums determined and fixed by the bureau for the employment or occupation of ~~such the employer, which.~~ The amount shall must be determined by the classifications, rules, and rates made and published by the bureau and ~~shall~~ must be based on a proportion of the annual expenditure of money by ~~such the employer~~ for the service of persons subject to the provisions of this title; ~~provided, however, that the computation of such premiums shall not be based upon any premium wages in excess of the basic hourly rate of pay or any annual remuneration, in whatever form, in excess of the sum of thirty six hundred dollars paid to any employee by any employer.~~ A receipt or certificate specifying that ~~such the~~ payment has been made ~~shall~~ must be mailed to ~~such the~~ employer by the bureau immediately after ~~such the~~ payment is made, and ~~such the~~ receipt or certificate, attested by the seal of the bureau, ~~shall be is~~ prima facie evidence of the payment of the premium. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of ~~such that~~ entity, and that premiums to be paid by all municipal corporations fall due at the end of the calendar year, and may make provisions so that premiums of other employers fall due on different or specified dates ~~and for.~~ For the purpose of effectuating such different or specified due dates the bureau may carry new or current risks for a period of less than one year and not to exceed fifteen months, either by request of the employer or action of the bureau.

SECTION 2. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Basis of calculating premiums.

1. For each year, the amount of an employee's wages subject to premium calculations must be determined as an amount equal to seventy

\* NOTE: Section 65-04-04 was also amended by section 32 of Senate Bill No. 2206, chapter 714.

percent of the statewide average annual wage, hereafter referred to as limited payroll, rounded to the nearest one hundred dollars, determined by the bureau on or before July first as calculated by job service North Dakota under subsection 3 of section 52-04-03.

2. The rates for each classification must be determined by:
  - a. Estimating the revenue needed by each employment classification;
  - b. Estimating the total limited payroll to be reported by all employers in each employment classification for the year;
  - c. Dividing the estimated revenue needed by an employment classification by the estimated total limited payroll in that classification to determine the required average premium for that classification rate; and
  - d. Determining the maximum and minimum rates for each employment classification by:
    - (1) Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and
    - (2) Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

SECTION 3. EFFECTIVE DATE. The bureau shall implement the premium calculation system established in this Act by July 1, 1992.

Approved April 8, 1991  
Filed April 8, 1991

## CHAPTER 717

HOUSE BILL NO. 1086  
(Committee on Judiciary)

(At the request of the Department of Corrections and Rehabilitation)

### INMATE DEFINED

AN ACT to amend and reenact section 65-06.2-01 of the North Dakota Century Code, relating to the definition of an inmate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06.2-01. Inmate defined. For the purposes of this chapter, an inmate is a person who is confined against the inmate's will in a city or county penal institution or is a person who, as a criminal defendant before a court, is ordered or elects to perform public service for a city or county in conjunction with or in lieu of a jail sentence. The term inmate shall not include an individual injured while incarcerated in the North Dakota state penitentiary or any of its affiliated facilities or an individual injured in a fight, riot, recreational activity, or other incident not directly related to the inmate's work assignment.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 718

HOUSE BILL NO. 1370  
(Representatives Bernstein, Schmidt, Byerly)  
(Senators Tennefos, Dotzenrod)

## EXTRATERRITORIAL WORKERS' COMPENSATION COVERAGE

AN ACT to amend and reenact section 65-08-01 of the North Dakota Century Code, relating to extraterritorial workers' compensation coverage; to repeal section 65-08-02 of the North Dakota Century Code, relating to reciprocity in extraterritorial application of workers' compensation acts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-08-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-01. Extraterritorial coverage; ~~when~~ - When and how furnished.

1. Compensation may be paid on account of injuries occurring outside this state or because of death due to an injury occurring outside of this state only when:
  - a. A North Dakota employee is a duly qualified peace officer of this state who received injury or was killed outside of this state in the course of his employment.
  - b. A North Dakota employee sustains an injury beyond the borders of this state in a service which is incidental to and is referable to the principal employment; the situs of which is within North Dakota.
  - c. A North Dakota employer and the bureau previously shall have contracted for insurance protection for employees while working outside of this state in the employment in which the injury occurred; which employment is incidental to or referable to the principal employment the localization and situs of which is not in North Dakota.
  - d. A North Dakota employer or his authorized agent has hired an employee, who is a resident of another state, for temporary employment the situs of which is located in another state, and where such temporary employment is necessary to the principal employment of such employer; provided that such other state recognizes the coverage under this title as a sole remedy of the employee against the employer for such injury or death.
2. If the injury is sustained at an identifiable out-of-state jobsite, the services rendered and injury sustained may not be deemed to be incidental and referable to the North Dakota employment, even if

the contractual relationship between employer and employee was entered in North Dakota:

3- ~~An employer of over-the-road truck drivers will be deemed to be a North Dakota employer only if:~~

~~a. The employer's trucking business has an office, operates, and dispatches from North Dakota; and~~

~~b. The employer retains control over the driver, and does not exclusively lease the driver to out-of-state employers.~~

1. An employee who suffers an injury while working outside this state, on account of which the employee or the employee's dependents would have been entitled to workers' compensation benefits provided by this title had such injury occurred within this state, is entitled to benefits, or that employee's dependents in the event of the employee's death are entitled to benefits if at the time of injury:

a. The employment is principally localized in this state, as determined by the following:

(1) The employer has a place of business in this state;

(2) The employee regularly works at or from that place of business;

(3) The employment contract is entered in this state; and

(4) In the case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer;

b. The employee is working under a contract of hire, made in this state in employment not principally localized in any state, if;

(1) The employer has a place of business in this state;

(2) The employment contract is entered in this state; and

(3) In the case of over-the-road trucking, the employer retains control over the driver, dispatches employees from this state, and does not lease the driver to out-of-state employers; but trip leasing does not end coverage;

c. The employee is working under a contract of hire made in this state in employment principally localized in another state and that state's workers' compensation law is not applicable to the employer, as provided by a reciprocal agreement;

d. The employee is working under a contract of hire made in this state for employment outside the United States and the workers' compensation law of that other jurisdiction is not applicable to the employer; or

e. The employee is a resident of another state, and is hired by a North Dakota employer or that employer's authorized agent for



- temporary employment, the situs of which is located in another state, and the temporary employment is necessary to the principal employment of the North Dakota employer, provided that the other state recognizes the coverage under this title as the sole remedy of the employee against the employer for the injury or death.
2. The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to workers' compensation benefits of this state bars a claim for benefits under this title.
  3. An employment relationship that is principally localized outside of this state is exempt from this title while the employee is temporarily within this state unless the workers' compensation law of the state in which the employment is principally localized provides that the workers' compensation remedy in this state is the exclusive remedy for the employee or the dependents of an employee who died as the result of an injury in this state.
  4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. Benefits paid under the other state's workers' compensation law, however, bar benefits in this state, unless benefits pursuant to the other state's act are paid only to supplement benefits under this title.

\* SECTION 2. REPEAL. Section 65-08-02 of the 1989 Supplement to the North Dakota Century Code is repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 1991  
Filed March 28, 1991

\* NOTE: Section 65-08-02 was amended by section 66 of Senate Bill No. 2206, chapter 714.

## CHAPTER 719

SENATE BILL NO. 2167  
(Committee on Industry, Business and Labor)  
(At the request of the Workers Compensation Bureau)

### SAFETY ENGINEER

AN ACT to amend and reenact subsection 5 of section 65-11-04 of the North Dakota Century Code, relating to the duty of the safety engineer to study accidents; and to repeal sections 65-11-02, 65-11-03, and 65-11-06 of the North Dakota Century Code, relating to the qualifications, salary, and removal of the safety engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 65-11-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Study ~~each accident~~ accidents to overcome ~~its cause~~ their causes.

\* SECTION 2. REPEAL. Sections 65-11-02, 65-11-03, and 65-11-06 of the North Dakota Century Code are repealed.

Approved April 2, 1991  
Filed April 4, 1991

\* NOTE: Section 65-11-06 was amended by section 68 of Senate Bill No. 2206, chapter 714.

## CHAPTER 720

SENATE BILL NO. 2166  
(Committee on Industry, Business and Labor)  
(At the request of the Workers Compensation Bureau)

### BOILER INSPECTION

AN ACT to amend and reenact sections 65-12-01, 65-12-02, 65-12-06, and 65-12-11 of the North Dakota Century Code, relating to the appointment of the chief and deputy boiler inspectors, inspection of steam traction engines, and boiler inspection fees; and to repeal section 65-12-13 of the North Dakota Century Code, relating to bonding of the boiler inspector.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-12-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-01. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction. The director shall ~~appoint~~ employ a chief boiler inspector and ~~such~~ deputy inspectors ~~as necessary in accordance with section 65-02-05~~. The chief boiler inspector shall have jurisdiction over all boilers in this state except as otherwise provided.

\* SECTION 2. AMENDMENT. Section 65-12-02 of the North Dakota Century Code is amended and reenacted as follows:

65-12-02. Qualifications of chief boiler inspector - Deputy inspectors. No person ~~shall be~~ is eligible to the office of chief boiler inspector unless ~~he~~ that person:

1. Has had at least ten years' ~~experience in the construction, maintenance, or repair of high pressure boilers, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector within five years immediately preceding his appointment~~ the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the director.
2. ~~Shall hold~~ Holds a commission issued by the national board of boiler and pressure vessel inspectors or ~~shall obtain such~~ obtains the commission within one year after the date of appointment by the bureau ~~director~~.

\* NOTE: Section 65-12-02 was also amended by section 69 of Senate Bill No. 2206, chapter 714.

3. ~~Shall~~ Is not be directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
4. The ~~workmen's~~ workers' compensation bureau shall establish qualifications for deputy inspectors which are not inconsistent with the requirements of the position.

SECTION 3. AMENDMENT. Section 65-12-06 of the North Dakota Century Code is amended and reenacted as follows:

65-12-06. Certificate of inspection - Certificate to be posted - Inspection. A certificate of inspection for each boiler inspected shall be issued by the bureau upon receipt of an inspection report certifying that said boilers are in a safe condition to be operated. No certificate of inspection shall be issued for any boiler not in a safe condition to be operated. Such inspection certificate shall be valid for a period of not more than twelve months for power boilers and twenty-four months for low pressure boilers and steam traction engines except that a two-month grace period shall be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may, ~~at his~~ by discretion, issue a short-term certificate. Each certificate of inspection shall be posted conspicuously under glass in the boiler room or adjacent to such boiler.

Each boiler of one hundred thousand pounds [45,359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the recordkeeping requirements hereafter prescribed, shall be inspected at least once every twenty-four months internally and externally while not under pressure, and at least once every eighteen months externally while under pressure. At any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler, the tests shall be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of such a boiler of one hundred thousand pounds [45,359.24 kilograms] per hour or more capacity desiring to qualify for twenty-four months inspection shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefore, and the chemical physical laboratory analysis of samples of the boiler water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics thereof which are capable of producing corrosion or other deterioration of the boiler or its parts. In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

SECTION 4. AMENDMENT. Section 65-12-11 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-12-11. Inspection fees. The owner or user of a boiler required by this chapter to be inspected by the boiler inspector shall pay to the bureau, upon completion of inspection, fees, or a combination of fees, which must be

determined annually by the bureau. The bureau may determine and annually adjust a fee scale for the internal inspection of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than ~~seventy-five~~ one hundred dollars may be charged or collected for any ~~and all inspections~~ one inspection of any boiler in any one year except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for any one inspection of steam traction engines in any one year except for special inspections made upon request. All other inspections made by the boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged for at a rate not to exceed one hundred eighty-five dollars per day or one hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09.

The bureau shall charge a fee of ten dollars for each certificate of inspection issued as the result of inspections authorized under section 65-12-05. The fees are the liability of the insurance company or self-insured company and must be paid in accordance with rules established by the bureau.

SECTION 5. REPEAL. Section 65-12-13 of the North Dakota Century Code is repealed.

Approved April 2, 1991  
Filed April 4, 1991

## CHAPTER 721

SENATE BILL NO. 2210  
 (Committee on Judiciary)  
 (At the request of the Workers Compensation Bureau)

### CRIME VICTIMS REPARATIONS PROGRAM

AN ACT to create and enact a new subdivision to subsection 1 of section 27-20-51, a new subsection to section 27-20-52, a new subdivision to subsection 6 of section 65-13-06, and two new sections to chapter 65-13 of the North Dakota Century Code, relating to the inspection of juvenile records by professional staff of the crime victims reparation program and the ability to accept gifts and confidentiality of records of reparation applicants; to amend and reenact subdivision a of subsection 5 of section 65-13-03, subdivision f of subsection 7 of section 65-13-03, subsection 2 of section 65-13-05, and sections 65-13-13 and 65-13-20 of the North Dakota Century Code, relating to crime victims reparations; and to provide a continuing appropriation for the Crime Victims Reparations Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 27-20-51 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 65-13.

SECTION 2. A new subsection to section 27-20-52 of the North Dakota Century Code is created and enacted as follows:

The professional staff of the uniform crime victims reparations program when necessary for the discharge of their duties pursuant to chapter 65-13.

SECTION 3. AMENDMENT. Subdivision a of subsection 5 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Occurs in or outside this state.

SECTION 4. AMENDMENT. Subdivision f of subsection 7 of section 65-13-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. "Victim" means a person who suffers bodily injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a

person suspected of engaging in criminally injurious conduct. "Victim" does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

SECTION 5. AMENDMENT. Subsection 2 of section 65-13-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The duty to adopt rules to implement this chapter. To adopt and enforce such rules, not inconsistent with the provisions of this chapter, as may be necessary to carry out the provisions of this chapter. All fees on claims for legal, medical, mental health, and hospital services, and the manner in which economic loss benefits are calculated, must be in accordance with the schedules of fees adopted by the board.

SECTION 6. A new subdivision to subsection 6 of section 65-13-06 of the 1989 Supplement to the North Dakota Century Code is created and enacted as follows:

To the extent the board deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.

SECTION 7. AMENDMENT. Section 65-13-13 of the North Dakota Century Code is amended and reenacted as follows:

65-13-13. Attorney's fees. As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous or that the appeal was unsuccessful. Attorney fees are not allowable for assisting a claimant in filing a claim. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

SECTION 8. AMENDMENT. Section 65-13-20 of the North Dakota Century Code is amended and reenacted as follows:

65-13-20. Filing false claim or false statements - Penalty. Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor and upon conviction shall, in addition to serving any punishment as. In addition to any other penalties provided by law, the claimant who violates this section shall forfeit any compensation paid under this chapter and reimburse the program for any benefits paid.

SECTION 9. A new section to chapter 65-13 of the North Dakota Century Code is created and enacted as follows:

Gifts, grants, and bequests - Gift fund - Appropriation. The board may accept on behalf of the state all gifts, grants, or bequests of real or personal property tendered to the state for any purpose pertaining to the activities of the board in implementing this chapter. There is established in the state treasury a special fund designated as the crime victims gift fund. All gifts, grants, and bequests of property or money, and any interest occurring thereon, must be placed in the crime victims gift fund. The fund may be used and disbursed by the board in accordance with the terms of the donation or, if there are no terms, for costs and expenses incurred by the board in the implementation of this chapter.

SECTION 10. A new section to chapter 65-13 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of records. All records of the board concerning the application for or award of reparations under this chapter are confidential and are not open to public disclosure. However, inspection of these records must be permitted by:

1. Law enforcement officers when necessary for the discharge of their official duties;
2. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant;
3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the board regarding any claim may, at the discretion of the board, inspect the claim files and records of persons;
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the board at any stage of the proceedings on any matter pertaining to the administration of this title.
5. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives in proceedings before the board and must be sealed at the conclusion of the proceedings.

Approved April 5, 1991  
Filed April 8, 1991



# VETOED MEASURES

## CHAPTER 722

HOUSE BILL NO. 1447  
(Representative Bateman)  
(Senator Meyer)

### LIVESTOCK REMOVAL WITHOUT BRAND INSPECTION

AN ACT to amend and reenact section 36-09-23 of the North Dakota Century Code, relating to the penalty for removal of livestock from the state.

VETO

March 12, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1447 provides a Class C felony for a second offense of removal of livestock from the state without a brand inspection.

I consider such a penalty too harsh since a second conviction, even if it occurs decades later, results in a felony.

I understand that amendments are being prepared to Section 36-09-23 NDCC to attach to legislation currently being considered which would make the penalty less onerous.

Those amendments will make the penalty more acceptable.

Therefore, I veto House Bill 1447.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless such livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany such livestock to destination. In lieu of such inspection, the owner or possessor may make and sign an invoice or waybill covering such stock showing marks and brands, number, sex and kind of the stock and the consignee and market destination where official brand inspection is provided by or for the said stockmen's association and mail a copy of such invoice or waybill to the association before the stock leaves the state.

It is unlawful for the owner or possessor to remove any such livestock from any place of such regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.

Any A first violation of this section constitutes a class B misdemeanor. A second or subsequent violation constitutes a class C felony.

Disapproved March 12, 1991  
Filed April 5, 1991

## CHAPTER 723

HOUSE BILL NO. 1371  
(Whalen, Thompson)

### INTERSTATE HIGHER EDUCATION AGREEMENTS

AN ACT to amend and reenact section 15-10-28 of the North Dakota Century Code, relating to agreements with other states' institutions of higher learning.

VETO

March 13, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1371 limits the authority of the Board of Higher Education to make funding reductions, in the event of revenue shortfalls, to programs undertaken by agreement with institutions of higher education in other states.

When such shortfalls occur, the Board, like all state agencies, needs as much flexibility as possible to manage higher education programs effectively and efficiently. I believe that flexibility needs to be preserved.

Therefore, I veto House Bill 1371.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-28 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-28. Agreements with other states' institutions of higher learning and regional education compacts. The state board of higher education may enter into agreements with institutions of higher learning in other states and regional education compacts. The board, subject to the

limits of legislative appropriations, may make such expenditures as are necessary for the purpose of utilizing the educational facilities of such institutions for teaching North Dakota students. In addition, the board may enter into agreements with institutions of higher learning in other states and regional education compacts for the acceptance of students from other states in North Dakota institutions of higher learning. If funding for the state board of higher education becomes limited or reduced, the board may not reduce funding to the several disciplines currently provided for under agreements with institutions of higher education in other states and under regional compacts, by a greater percentage than that percentage by which the total budget of the board was reduced.

Disapproved March 13, 1991  
Filed April 5, 1991

**CHAPTER 724**

HOUSE BILL NO. 1276  
(Representatives D. Olsen, Gilmore, Larson)  
(Senators Tallackson, Mushik, Thane)

**NURSING HOME OPERATING COST REIMBURSEMENT**

AN ACT to amend and reenact sections 50-24.4-01 and 50-24.4-10 of the North Dakota Century Code, relating to definition of terms and reimbursement for nursing home operating costs after January 1, 1990; and to provide an effective date.

VETO

March 20, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1276 establishes by law a formula for nursing home reimbursement, retroactive to January 1, 1990.

The objective of this legislation is the insulation of nursing homes from cuts in state funding in the event that spending reductions are necessary. In case of an allotment, Service Payments to the Elderly and Disabled (SPED), programs for children, persons with mental retardation and the mentally ill are required to bear all of the cuts. That simply is not fair.

When the Governor determines that spending reductions are necessary due to decreases in revenue, the Governor and all state agencies need maximum flexibility to make cuts in a way that results in fairness, minimum harm and shared sacrifices. House Bill 1276 would limit the flexibility necessary to accomplish those ends.

Therefore, I veto House Bill 1276.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-01. Definitions. For the purposes of this chapter:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.
2. "Actual resident day" means a billable, countable day as defined by the department.
3. "Department" means the department of human services.
4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.
5. "Direct care costs" means the cost category for allowable nursing and therapy costs.
6. "Final rate" means the rate established after any adjustment by the department, including, but not limited to, adjustments resulting from cost report reviews and audits.
- ~~6-~~ 7. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, and uniform allowances.
- ~~7-~~ 8. "General and administrative costs" means all allowable costs for administering the facility, including, but not limited to: salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies, travel, except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit under subsection 6; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.
- ~~8-~~ 9. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.
10. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

- ~~9-~~ 11. "Nursing home" means a facility, not owned or administered by the state government, described in subsection 3 of section 43-34-01.
12. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~10-~~ 13. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.
- ~~11-~~ 14. "Payment rate" means the rate determined under section 50-24.4-06.
- ~~12-~~ 15. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~13-~~ 16. "Private-paying resident" means a nursing home resident on whose behalf the nursing home is not receiving medical assistance payments and whose payment rate is not established by any other third party, including the veteran's administration or medicare.
- ~~14-~~ 17. "Rate year" means a fiscal year for which a payment rate determined under this chapter is effective, from January first to the next December thirty-first.
- ~~15-~~ 18. "Real estate" means improvements to real property and attached fixtures used directly for resident care.
- ~~16-~~ 19. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this chapter.
- ~~17-~~ 20. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and any other person performing functions ordinarily performed by such personnel.

SECTION 2. AMENDMENT. Section 50-24.4-10 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-10. Operating costs after January 1, 1990.

1. For rate years beginning on or after January 1, 1990, the department shall establish procedures for determining per diem reimbursement for operating costs.
2. The department shall maintain access to national and state economic change indices that can be applied to the appropriate cost categories when determining the operating cost payment rate.
3. The department shall analyze and evaluate each nursing home's cost report of allowable operating costs incurred by the nursing home during the reporting year immediately preceding the rate year for which the payment rate becomes effective.
4. The department shall establish limits on actual allowable historical operating cost per diems based on cost reports of

allowable operating costs for the reporting year that begins July 1, 1987, taking into consideration relevant factors including resident needs, nursing hours necessary to meet resident needs, size of the nursing home, and the costs that must be incurred for the care of residents in an efficiently and economically operated nursing home. The limits established by the department may not be less, in the aggregate, than the sixtieth percentile of total actual allowable historical operating cost per diems for each group of nursing homes established under this chapter based on cost reports of allowable operating costs in the previous reporting year. The limits established under this subsection remain in effect until the department establishes a new base period. Until the new base period is established, the department shall adjust the limits annually using the appropriate economic change indices established in subsection 5. In determining allowable historical operating cost per diems for purposes of setting limits and nursing home payment rates, the department shall divide the allowable historical operating costs by the actual number of resident days, except that where a nursing home is occupied at less than ninety percent of licensed capacity days, the department may establish procedures to adjust the computation of the per diem to an imputed occupancy level at or below ninety percent. The department shall establish efficiency incentives as appropriate follows: for a facility with an actual rate below the limit rate for indirect care costs, an amount equal to two dollars and sixty cents per resident day or a part thereof as determined by applying seventy percent times the differences between the actual rate, exclusive of inflation indices, and the limit rate, exclusive of current inflation indices will be included as a part of the indirect care cost rate. The department may establish efficiency incentives for different operating cost categories. The department shall consider establishing efficiency incentives in care-related cost categories. The department may combine one or more operating cost categories and may use different methods for calculating payment rates for each operating cost category or combination of operating cost categories.

5. The department shall establish a composite index or indices by determining the appropriate economic change indicators to be applied to specific operating cost categories or combination of operating cost categories.
6. Each nursing home shall receive an operating cost payment rate equal to the sum of the nursing home's operating cost payment rates for each operating cost category. The operating cost payment rate for an operating cost category must be the lesser of the nursing home's historical operating cost in the category increased by the appropriate index established in subsection 5 of this section for the operating cost category plus an efficiency incentive established pursuant to subsection 4 of this section or the limit for the operating cost category increased by the same index. If a nursing home's actual historic operating costs are greater than the prospective payment rate for that rate year, there may be no retroactive cost settle-up. In establishing payment rates for one or more operating cost categories, the department may establish separate rates for different classes of residents based on their relative care needs.



7. Each nursing home must receive an operating margin of at least three percent based upon the lesser of the actual direct care and other direct care rates and the limit rate prior to inflation. The operating margin will then be added to the rate for direct care and other direct care costs categories.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Disapproved March 20, 1991  
Filed April 12, 1991

## CHAPTER 725

HOUSE BILL NO. 1091  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Veterans' Affairs)

### VETERANS' PREFERENCE APPLICATION

AN ACT to amend and reenact subsection 5 of section 37-19.1-01 of the North Dakota Century Code, relating to the definition of veteran for veterans' preference purposes.

VETO

March 26, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1091 extends the wartime veterans' public employment preference to non-wartime veterans.

While some limited preference for an adjustment period might be in order for non-wartime veterans, this legislation goes too far in providing a lifetime preference. By doing so, the bill dilutes the value of the preference to wartime veterans.

We need to devote greater efforts to assist wartime and disabled veterans.

This bill would lessen our ability to do that.

Therefore, I veto House Bill 1091.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 37-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Veteran" means a ~~wartime~~ veteran person as defined in subsection ~~2~~  
1 of section 37-01-40.

Disapproved March 26, 1991  
Filed April 5, 1991

## CHAPTER 726

HOUSE BILL NO. 1365  
(Representatives R. Berg, Wald)  
(Senator Meyer)

### RENT CONTROLS

AN ACT to prohibit political subdivisions from establishing rent controls.

VETO

March 26, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1365 prohibits political subdivisions from enacting, maintaining or enforcing ordinances or resolutions "...that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property."

Our contacts with numerous city attorneys have indicated that while home rule cities may have the authority to impose rent controls, there has never been any serious discussion of doing so of which they are aware. Therefore, if this legislation is aimed at prohibiting direct rent controls, it appears to be a solution in search of a problem.

More importantly, the language, "have the effect of" is problematic. It could be interpreted to mean that a change in a zoning ordinance could "have the effect of" limiting rent increases by permitting new apartments or commercial buildings. It could be interpreted to mean inability of a city to build or maintain streets could "have the effect of" lowering the value -- and the rent -- of a building. Many actions taken or refused to be taken by city governments could "have the effect of" rent controls.

Our cities do not need to be burdened by such restrictions.

Therefore, I veto House bill 1365.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Rent controls - Prohibited. A political subdivision may not enact, maintain, or enforce an ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property. This section does not impair the right of a political subdivision to manage and control residential property in which the political subdivision has a property interest.

Disapproved March 26, 1991  
Filed April 5, 1991

## CHAPTER 727

HOUSE BILL NO. 1515  
(Representatives Wald, Kerzman, D. Olsen)  
(Senators Jerome, Marks, Naaden)

### ABORTIONS

AN ACT to amend and reenact sections 14-02.1-01, 14-02.1-02, 14-02.1-03, subsection 2 of section 14-02.1-03.1, and sections 14-02.1-04 and 14-02.1-12 of the North Dakota Century Code, relating to abortions and the Human Life Protection Act; and to provide a penalty.

VETO

April 1, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

While each of us has strong beliefs, the heart of the controversy over HB 1515 is women's rights during pregnancy and the question of when the separate human person, with immortal intellect and will, is present. Is it at conception, sometime later, or at birth?

No one knows.

The opinions of thoughtful people, religious and secular, on this issue, differ widely throughout history and in the present day.

Given that unknown, government's role must clearly be restrained. History is full of accounts of the misuse of governmental power, often for a "good" cause. On this issue abuse can exist on both sides. Some even suggest legally requiring abortions for cases of AIDS and to curtail overpopulation. Such abuse must be resisted vigorously on both sides. Government must not overstep its bounds. It must not play God.

I am a Catholic and, although throughout history Catholic writings on when life begins vary widely, I agree with the current Catholic judgment that abortion is wrong.

The issue here, however, is the role of law.

I do not agree with those churchmen who urge government to impose extremely restrictive laws. In that regard, I am in far greater agreement with the many Christians of all faiths who rely heavily on Christ's admonition to cling to "faith, hope and love," not "faith, hope and law," remembering that not once did Jesus say, "There ought to be a law."

The fact that so many thoughtful people today and throughout history have differed in their beliefs on this issue is perhaps why a great many caring faith communities, Jewish, Christian and otherwise, have admonished public officials to tread carefully in public policy in this area.

Let me quote some individual statements which indicate the heartfelt differences of opinion (realizing that, in some cases, there may have been varying statements by these organizations):

The Lutheran Church in America, in its 1970 social statement on "Sex, Marriage and Family," stated:

On the basis of the Evangelical ethic, a woman or couple may decide responsibly to seek an abortion. Earnest consideration should be given to the life and total health of the mother, her responsibilities to others in her family, the stage of development of the fetus, the economic and psychological stability of the home, the laws of the land, and the consequences for society as a whole.

The National Council of Catholic Bishops, on November 7, 1989, adopted the following statement:

Our long- and short-range public policy goals include: (1) constitutional protection for the right to life of unborn children to the maximum degree possible; (2) federal and state laws and administrative policies that restrict support for and the practice of abortion; (3) continual refinement and ultimate reversal of Supreme Court and other court decisions that deny the inalienable right to life; (4) supportive legislation to provide morally acceptable alternatives to abortion, and social policy initiatives which provide support to pregnant women for prenatal care and extended support for low income women and their children. We urge public officials, especially Catholics, to advance these goals in recognition of their moral responsibility to protect the weak and defenseless among us.

The United Methodist Church, in General Conference in 1988, adopted the following resolution:

We support the legal right to abortion as established by the 1973 Supreme Court decision. We encourage women in counsel with husbands, doctors, and pastors to make their own responsible decisions concerning the personal and moral questions surrounding the issue of abortion.

The American Jewish Congress, at its Biennial Convention in 1989, said the following:

The American Jewish Congress has long recognized that reproductive freedom is a fundamental right, grounded in the most basic notions of personal privacy, individual integrity and religious liberty. Jewish religious traditions hold that a woman must be left to her own conscience and God to decide for herself what is morally correct.

The policy of the Presbyterian Church, adopted in the General Assembly 1983, and reaffirmed in 1985, 1987, 1988, and 1989 reads:

...The church's position on public policy concerning abortion should reflect respect for other religious traditions and advocacy for full exercise of religious liberty. The Presbyterian Church exists within a very pluralistic environment. Its own members hold a variety of views. It is exactly this pluralism of beliefs which lead us to the conviction that the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference.

Consequently, we have a responsibility to work to maintain a public policy of elective abortion, regulated by the health code, not the criminal code. The legal right to have an abortion is a necessary prerequisite to the exercise of conscience in abortion decisions. Legally speaking, abortion should be a woman's right because, theologically speaking, making a decision about abortion is, above all, her responsibility.

The United Church of Christ, in its General Synod 16, wrote the following:

(The Synod) Upholds the right of men and women to have access to adequately funded family planning services, and to safe, legal abortions as one option among others....

The Reorganized Church of Jesus Christ of Latter Day Saints in 1974 (reaffirmed in 1980) adopted the following:

We affirm the inadequacy of simplistic answers that regard all abortions as murder, or, on the other hand, regard abortion only as a medical procedure without moral significance.

We affirm the right of the woman to make her own decision regarding the continuation or termination of problem pregnancies. Preferably, this decision should be made in cooperation with her companion and in consultation with a physician, qualified minister, or professional counselor....

The Episcopal Church, in its General Convention in 1988, adopted the following:

We believe that legislation concerning abortions will not address the root of the problem. We therefore express our deep conviction that any proposed legislation on the part of national or state governments regarding abortions must take special care to see that individual conscience is respected and that the responsibility of individuals to reach informed decisions in this matter is acknowledged and honored.

These are the varied conclusions of thinking, caring religious Americans.

There are many other historical writings as well which have led me to conclude that, since neither I nor anyone else can prove the presence of a separate human person at the moment of conception, women's consciences must be respected.



Government policy must find a balanced way which respects the freedom of women in this difficult area. This bill does not do so.

That is why I have vetoed HB 1515.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

~~14-02.1-01. Purpose Legislative findings and purposes. The purpose of this chapter is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick.~~

1. The legislative assembly finds that:

- a. Unborn children are human beings, and abortion is the taking of the life of an unborn child who is a member of the human race;
- b. The most basic of all human rights is the right to life. It has properly been called "the right to have rights". Therefore, the first obligation of any legitimate government is to protect the lives of those human beings within its jurisdiction;
- c. This state has a compelling interest in protecting the lives of unborn children throughout pregnancy;
- d. This state has a compelling interest in protecting the lives of women, and specifically the lives of pregnant women;
- e. This state affirms the longstanding tradition in American law of prosecuting those who perform illegal abortions, and not the pregnant women who undergo them;
- f. Alternatives are available in this state to support women with unplanned and difficult pregnancies and to enable them to give birth, including publicly funded services, high-risk pregnancy and pediatric services, as well as privately funded alternative agencies, such as crisis pregnancy centers and adoption agencies.

2. Based on the findings in subsection 1, it is the purpose of this Act to protect the lives of unborn children; prevent arbitrary, invidious and unconstitutional discrimination against unborn children; protect pregnant women's lives by permitting those medical procedures necessary to preserve their lives; encourage childbirth for pregnant women; and reasonably regulate abortion in conformance with current decisions of the United States supreme court.

SECTION 2. AMENDMENT. Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02. Definitions. As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant, except to save the life or preserve the health of an unborn child, to produce a live birth, to remove a dead unborn child by accepted medical procedures, or to deliver an unborn child prematurely in order to preserve the health of either the mother or the unborn child. However, the termination of a woman's pregnancy with the intent to produce a live birth is not an abortion.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed, other than a hospital. For purposes of this Act, an abortion clinic is one operated substantially for the performance of abortions and performs thirty or more abortions per month any two months of a calendar year or which holds itself out to the public as an abortion provider or applies for a license as an abortion provider.
3. "Conception" means the fusion of a human spermatozoon with a human ovum.
4. "Hospital" means an institution licensed by the state department of health and consolidated laboratories under chapter 23-16, and any hospital operated by the United States or this state.
- ~~4-~~ 5. "Infant born alive" or "live born child" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- ~~5-~~ 6. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of as much of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:
  - a. According to the best judgment of her attending physician, she is pregnant.
  - b. The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or based upon a history and physical examination and appropriate laboratory tests.
  - c. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed.

- d. The immediate and long-term physical dangers of abortion, psychological trauma resulting from abortion, sterility and increases in the incidence of premature births, tubal pregnancies and stillbirths in subsequent pregnancies, as compared to the dangers in carrying the pregnancy to term.
- e. The particular risks associated with her own pregnancy and the abortion technique to be performed.
- f. Alternatives to abortion such as childbirth and adoption and information concerning public and private agencies that will provide the woman with economic and other assistance and encouragement to carry her child to term including, if the woman so requests, a list of the agencies and the services available from each.
- g. In cases where the fetus may reasonably be expected to have reached viability and thus be capable of surviving outside of her womb, the attending physician shall inform the woman of the extent to which he is legally obligated to preserve the life and health of her viable unborn child during and after the abortion.

In addition, the physician may inform the woman of any other material facts or opinions or provide any explanation of the above information which, in the exercise of ~~his~~ the physician's best medical judgment, is reasonably necessary to allow the woman to give her informed consent to the proposed abortion, with full knowledge of its nature and consequences.

Informed consent shall be evidenced by a written statement, in the form prescribed by the state department of health and consolidated laboratories and approved by the attorney general, signed by the physician and the woman upon whom the abortion is to be performed, in which statement the physician certifies that ~~he has made the~~ full disclosure ~~has been made~~ as provided above; and in which statement the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

Informed consent shall not be required in the event of a medical emergency when the woman is incapable of giving her consent if a licensed physician certifies the abortion is necessary to prevent her death.

- ~~6-~~ 7. "Licensed physician" means a person who is licensed to practice medicine or osteopathy under chapter 43-17, or a physician practicing in the armed services of the United States, or in the employ of the United States.
8. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's body, beginning with conception.
9. "Unborn child" means an individual organism of the species homo sapiens from conception until birth.

- 7- 10. "Viable" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

SECTION 3. AMENDMENT. Section 14-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-03. Consent to abortion - Notification requirements.

1. ~~No~~ A physician ~~shall~~ may not perform an abortion unless prior to ~~such performance~~ the abortion the physician certified in writing that the woman gave her informed consent fully and without coercion, after the attending physician had informed the woman of the information contained in section 14-02.1-02 not more than thirty days nor less than forty-eight hours prior to her consent to the abortion and shall certify in writing the pregnant woman's marital status and age based upon proof of age offered by her. Prior to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion ~~shall~~ may be performed upon an unemancipated minor unless the attending physician certifies in writing that each of the parents of the minor ~~requesting the abortion~~ has been provided by the physician in person with the information provided for in section 14-02.1-02 at least twenty-four hours prior to the minor's consent to the ~~performance of~~ abortion or unless the attending physician certifies in writing that ~~he~~ the physician has caused materials of section 14-02.1-02 to be posted by certified mail to each of the parents of the minor separately to the last known addresses at least forty-eight hours prior to the minor's consent to the ~~performance of~~ abortion. When a parent of the minor has died or rights and interests of such parent have been legally terminated, this subsection shall apply applies to the guardian or other person standing in loco parentis.
2. ~~Subsequent to the period of pregnancy when the fetus may reasonably be expected to have reached viability, no abortion, other than an abortion necessary to preserve her life, or because the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health, may be performed upon any woman in the absence of:~~
  - a. ~~The written consent of her husband unless her husband is voluntarily separated from her; or~~
  - b. ~~The written consent of a parent, if living, or the custodian or legal guardian of the woman, if the woman is unmarried and under eighteen years of age.~~
- 3- No executive officer, administrative agency, or public employee of the state of North Dakota or any local governmental body has power to issue any order requiring an abortion, nor ~~shall~~ may any such officer or entity coerce any woman to have an abortion, nor shall any other person coerce any woman to have an abortion.

SECTION 4. AMENDMENT. Subsection 2 of section 14-02.1-03.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Any pregnant woman under the age of eighteen ~~or next friend shall be~~ is entitled to apply to the juvenile court of her place of domicile or permanent residence, or in the place of domicile of her parents for authorization to obtain an abortion without parental consent. Proceedings on such application ~~shall must~~ be conducted in the juvenile court of the county ~~of the minor's residence~~ of her place of domicile or permanent residence, or in the place of domicile of her parents before a juvenile judge or referee, if authorized by the juvenile court judge in accordance with the provisions of chapter 27-05, except that the parental notification requirements of chapter 27-20 ~~shall are not be~~ applicable to proceedings under this section. All applications in accordance with this section ~~shall must~~ be heard by a juvenile judge or referee within forty-eight hours, excluding Saturdays and Sundays, of receipt of the application. The purpose of the hearing before the juvenile judge or referee ~~shall be is~~ to determine:
  - a. Whether or not the minor is sufficiently mature and well informed with regard to the nature, effects, and possible consequences of both having an abortion and bearing her child to be able to choose intelligently among the alternatives.
  - b. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives without the advice and counsel of her parents or guardian, whether or not it would be in the best interests of the minor to notify her parents or guardian of the proceedings and call in the parents or guardian to advise and counsel the minor and aid the court in making its determination and to assist the minor in making her decision.
  - c. If the minor is not sufficiently mature and well informed to choose intelligently among the alternatives and it is found not to be in the best interests of the minor to notify and call in her parents or guardian for advice and counsel, whether an abortion or some other alternative would be in the best interests of the minor, with abortion being considered only as a last resort.

SECTION 5. AMENDMENT. Section 14-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-04. Limitations on the performance of abortions - Penalty.

1. ~~No~~ An abortion ~~shall be done~~ may not be performed by any person other than a licensed physician using medical standards applicable to all other surgical procedures.
2. ~~After the first twelve weeks of pregnancy but prior to the time at which the fetus may reasonably be expected to have reached viability, no abortion may be performed in any facility other than a licensed hospital.~~ Except as provided in subsection 3, no person may perform an abortion upon a pregnant woman unless her attending physician reasonably determines, in the physician's medical

judgment, that the woman's life would be endangered if the unborn child were carried to full term and records, either before or after the abortion, the basis for the physician's determination in the woman's medical record.

3. After the point in pregnancy where the fetus may reasonably be expected to have reached viability, no abortion may be performed except in a hospital, and then only if in the medical judgment of the physician the abortion is necessary to preserve the life of the woman or if in the physician's medical judgment the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

An abortion under this subsection may only be performed if the above-mentioned medical judgment of the physician who is to perform the abortion is first certified by him in writing, setting forth in detail the facts upon which he relies in making this judgment and if this judgment has been concurred in by two other licensed physicians who have examined the patient. The foregoing certification and concurrence is not required in the case of an emergency where the abortion is necessary to preserve the life of the patient. An abortion is also authorized if:

- a. The pregnancy resulted from gross sexual imposition, sexual imposition, or sexual abuse of a ward, as those offenses are defined in chapter 12.1-20, and the offense was reported to a law enforcement agency within twenty-one days after the offense or within fifteen days after the time the victim becomes capable of reporting the offense.
- b. The pregnancy resulted from incest, as that offense is defined in chapter 12.1-20, and both the offense and the identity of the perpetrator are reported to a law enforcement agency before the pregnancy is terminated.
4. Any licensed physician who performs an abortion without complying with the provisions of this section is guilty of a class A misdemeanor. In addition to any other penalty, upon notice and hearing, if the evidence supports the allegation that a physician has not complied with this section in performing abortions, the physician's license must be revoked for at least one year.
5. It shall be is a class B felony for any person, other than a physician licensed under chapter 43-17, to perform an abortion in this state.

SECTION 6. AMENDMENT. Section 14-02.1-12 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-12. Short title. This chapter may be cited as the North Dakota ~~Abortion Control~~ Human Life Protection Act.

Disapproved April 1, 1991  
Filed April 8, 1991

## CHAPTER 728

HOUSE BILL NO. 1336  
(Representatives Oban, Larson)  
(Senators Mushik, Thane)

### PROPERTY TAX INSTALLMENT DISCOUNT

AN ACT to amend and reenact sections 57-02-08.2 and 57-20-09 of the North Dakota Century Code, relating to a discount for early payment of property taxes to persons sixty-five years of age or older or permanently and totally disabled with limited income upon payment of property taxes in installments; to provide an appropriation; to provide for application; and to provide an effective date.

VETO

April 4, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1336 provides for new state payments to counties of the amount of discounts allowed for installment payments, without delinquency, of property taxes by any taxpayer who receives the homestead exemption.

This is an extension of the homestead credit program at a time when the state has had to cut or severely restrict other programs which benefit our citizens.

Although the appropriation is rather small, at \$82,200, it will result in cuts to other programs of equal or greater merit. We cannot afford new programs when we cannot adequately fund current programs.

Therefore, I veto House Bill 1336.

Sincerely,

GEORGE A. SINNER  
Governor

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

SECTION 1. AMENDMENT. Section 57-02-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.2. Homestead credit - Certification. Prior to March ~~+~~ ~~1975,~~ ~~and first~~ of each year ~~thereafter,~~ the county auditor of each county shall certify to the state tax commissioner on forms prescribed by ~~him~~ the tax commissioner the name and address of each person for whom the homestead credit provided for in section 57-02-08.1 was allowed for the preceding year, the amount of exemption allowed, the amount of discounts allowed for installment payments of property taxes during the preceding year under section 57-20-09, the total of the tax mill rates of all taxing districts, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for the preceding year, and such other information as may be prescribed by the tax commissioner.

The tax commissioner shall audit such certifications, make such corrections as may be required, and certify to the state treasurer for payment to each county on or before June ~~+~~ ~~1975,~~ ~~and first~~ of each year ~~thereafter,~~ the sum of the amounts computed by multiplying the exemption allowed for each such homestead in the county for the preceding year by the total of the tax mill rates, exclusive of any state mill rates, that was applied to other real estate in such taxing districts for that year plus the amount of discounts allowed for installment payments of property taxes under section 57-20-09 during that year.

The county treasurer upon receipt of the payment from the state treasurer shall forthwith apportion and distribute it to the county and to the local taxing districts of the county on the basis on which the general real estate tax for the preceding year is apportioned and distributed.

Supplemental certifications by the county auditor and by the state tax commissioner and supplemental payments by the state treasurer may be made after the dates prescribed herein to make such corrections as may be necessary because of errors therein or because of approval of any application for abatement filed by a person because the exemption provided for in section 57-02-08.1 was not allowed in whole or in part.

SECTION 2. AMENDMENT. Section 57-20-09 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-20-09. Discount for early payment of tax. Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to ~~all taxpayers who shall pay~~ any taxpayer who pays all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. ~~Such discount shall apply~~ Except as provided in section 57-20-21.1, the county treasurer shall allow a five percent discount to any taxpayer who received the homestead exemption under section 57-02-08.1 for the preceding year, if that taxpayer pays taxes in installments and pays each installment for the year without delinquency under section 57-20-01. The county treasurer shall apply the discount for installment payments under this section against the final installment payment for the year. Any discount under this section applies to all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts, but ~~shall~~ does not apply to personal property taxes or special



assessment installments. ~~Whenever the~~ The board of county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period for an additional thirty days.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$82,200, or so much thereof as may be necessary, to the state treasurer for the purpose of payments to counties under this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 4. EFFECTIVE DATE - APPLICATION. Sections 1 and 2 of this Act are effective for taxable years beginning after December 31, 1989.

Disapproved April 3, 1991  
Filed April 9, 1991

**CHAPTER 729**

HOUSE BILL NO. 1462  
(Urlacher, Martin)

**COMMUNITY SPOUSE RESOURCE ALLOWANCE**

AN ACT to amend and reenact section 50-24.1-02.2 of the North Dakota Century Code, relating to community spouse resource allowance.

VETO

April 4, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1462 would increase the community spouse resource allowance for those persons who entered long-term care prior to September 30, 1989, from \$25,000 to \$66,480.

The fiscal impact to the budget of the Department of Human Services (DHS) is estimated at \$1,061,400. No funding has been provided by the legislature in this bill nor has additional funding been added to the DHS budget for this purpose. In fact, to this point, even funding for the "critical needs funding pool," which could have provided a source for this program, has now been deleted from the DHS budget.

Therefore, there is no funding for this enhancement. It would be the worst kind of fiscal mismanagement to begin the 1991-93 biennium with cuts in other DHS programs to accommodate this legislation.

Under the North Dakota Constitution, I have no choice but to stop unfunded programs before they start. We have discussed this issue with interested legislators who, we understand, are working to restore this language if a new funding source can be found.

Therefore, I veto House Bill 1462.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.2. Community spouse resource allowance. ~~In determining eligibility for medical assistance applicants and recipients, the~~ The department of human services shall establish a community spouse resource allowance ~~of at least twenty five thousand dollars for an ineligible community spouse~~ equal to the maximum community spouse resource allowance permitted under 42 U.S.C. 1396r-5(f)(2).

Disapproved April 2, 1991  
Filed April 12, 1991

## CHAPTER 730

SENATE BILL NO. 2294  
(Senators Tallackson, Vosper)  
(Representatives Nicholas, Nowatzki, Dalrymple)

### HASTINGS HALL PURCHASE

AN ACT providing an appropriation to the agricultural experiment station to purchase Hastings hall from the state seed department.

VETO

April 4, 1991

The Honorable Lloyd B. Omdahl  
President of the Senate  
Senate Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2294 provides for a \$500,000 appropriation to the Agriculture Experiment Station from general and special funds for the purchase of Hastings Hall from the State Seed Department.

Our research indicates that never before have state general fund dollars been utilized by one state agency to purchase a building from another state agency.

Furthermore, the general fund does not have \$300,000 in excess funding to provide for this purchase.

This bill sets a poor precedent and is the beginning of busting the budget.

Therefore, I veto Senate Bill 2294.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, and from special

funds, derived from other income, the sum of \$200,000, or so much thereof as may be necessary, to the agricultural experiment station for the purpose of purchasing Hastings hall on the North Dakota state university campus from the state seed department, for the biennium beginning July 1, 1991, and ending June 30, 1993.

Disapproved April 3, 1991  
Filed April 12, 1991

## CHAPTER 731

HOUSE BILL NO. 1599  
(R. Berg, Oban, Schneider)

### HOUSING AUTHORITY FUNDING

AN ACT to create and enact a new subsection to section 23-11-11 of the North Dakota Century Code, relating to the powers of housing authorities; and to amend and reenact section 54-17-07.6 of the North Dakota Century Code, relating to the acceptance of grants, contributions, loans, and other aid by the state housing finance agency.

VETO

April 8, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chambers  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1599 fragments management of housing authority moneys in this state of only 640,000 people. In addition sparsely populated areas will remain unserved or subservient to urban center authorities. Both concepts are ill advised.

Administrative monies for servicing those areas could only come from General Fund sources . . . and the already redundant structure will be made infinitely worse.

Therefore, I veto House Bill 1599.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-11-11 of the North Dakota Century Code is created and enacted as follows:

To exercise within its area of operation the authority granted to the industrial commission under section 54-17-07.6.

SECTION 2. AMENDMENT. Section 54-17-07.6 of the North Dakota Century Code is amended and reenacted as follows:

54-17-07.6. Acceptance of grants, contributions, loans, or other aid. Acting in its capacity as a state housing finance agency, the industrial commission ~~is authorized to may~~ contract for, accept, and administer any grant, contribution, or loan of funds, property, or other aid in any form from the federal government or from any other source, and ~~to may~~ do all things necessary to qualify for any grant, contribution, or loan under any federal program, including those things necessary to qualify for assistance under the federal housing programs in effect from time to time. A housing authority established under chapter 23-11 which elects to exercise the authority granted to the industrial commission under this section preempts the industrial commission from acting within the area of operation of that housing authority. A local housing authority may elect to exercise the authority granted to the industrial commission under this section only within two years of the effective date of this Act. For transition of housing certificates and vouchers, a local housing authority that elects to exercise the authority granted to the industrial commission and that would administer three hundred or more units of certificates and vouchers administered by the industrial commission shall agree to accept a rate of seventy percent of the total contract administrative fees for the affected certificates and vouchers for two years or until all local housing authorities in the state have entered into the administration of their certificates and vouchers, whichever is sooner. The remaining thirty percent of the fees remain with the industrial commission until that time to assure the provision of housing services to rural areas until local administration is implemented.

Disapproved April 8, 1991  
Filed April 11, 1991

## CHAPTER 732

HOUSE BILL NO. 1079  
(Representatives Carlisle, Henegar, St. Aubyn)  
(Senators Freborg, Heinrich, Nalewaja)

### DRUG OFFENSE MINIMUM SENTENCING

AN ACT to amend and reenact subsection 10 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and 54-21-25 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; to provide an appropriation; and to provide an effective date.

VETO

April 18, 1991

The Honorable Jim Kusler  
Secretary of State  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Kusler:

House Bill 1079 requires minimum and enhanced sentences in a variety of drug-related cases.

In April of 1989, with regard to Senate Bill 2332, I wrote:

I firmly believe that judges are in the best position to address the unique cases that may come before them. Judges must impose strict sentences on those who are so evil as to maliciously prey on our children and young people, and they currently have all of the authority they need to do so.

However, I am especially concerned about first-time offenders for whom a jail or prison sentence, instead of providing any sort of rehabilitation, may only serve to confirm in them their worst instincts and result in lifetime criminals. All of us know that there are many cases -- many people -- who could have been saved had some form of alternative sentence been allowed and provided.

I believe in a system in which the judges who are present at trial, who have heard the evidence, who have available to them a pre-sentence



investigation report and who have the input of the victims are able to make an appropriate decision which conforms to the criminal, the crime and the victim.

Furthermore, no appropriation has been provided to address the significant increase in prison sentences which are likely to result from this bill. Corrections budgets in other states which have enacted mandatory sentences have gone out of control.

These same concerns are true today. Although there have been minor amendments to House Bill 1079, they do not address my concerns; and the appropriation provided in the bill -- \$126,000 -- is totally inadequate to meet the long-term needs for prison facilities.

Therefore, I veto House Bill 1079.

Sincerely,

GEORGE A. SINNER  
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 12.1-32-02 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence. This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Minimum prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, minimum terms of imprisonment ~~shall~~ must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, ~~he~~ the offender inflicts or attempts to inflict bodily injury upon another, or threatens or menaces another with imminent bodily injury with a dangerous weapon, an explosive, destructive device, or a firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. Such minimum penalties ~~shall~~ apply only when possession of a dangerous weapon, ~~an~~ explosive, destructive device, or a firearm has been charged and admitted or found to be true in the manner provided by law, and ~~shall~~ must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Minimum terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance; ~~provided, that, but any person whose conduct is in violation of who violates~~ section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. ~~Any~~ Except when a person delivers a controlled substance without receiving remuneration or agreeing to receive remuneration for the controlled substance, the court may not suspend execution or defer imposition of any sentence imposed under subdivision a, b, or c of this subsection. However, the court may suspend execution of no more than one-half of any sentence imposed for a first offense under subdivision a, b, or c of this subsection. Subject to this requirement, any person who violates this subsection with respect to:
  - a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
    - (1) For a first offense, to imprisonment for at least a year and a day.
    - (2) For a second offense, to imprisonment for at least five years.
    - (3) For a third or subsequent offense, to imprisonment for twenty years.
  - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who delivers marijuana, any person found guilty under this subdivision must be sentenced:
    - (1) For a first offense, to imprisonment for at least eight months.
    - (2) For a second offense, to imprisonment for at least three years.
    - (3) For a third or subsequent offense, to imprisonment for ten years.

- c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
- (1) For a second offense, to imprisonment for at least six months.
  - (2) For a third offense, to imprisonment for at least one year.
  - (3) For a fourth or subsequent offense, to imprisonment for five years.
- d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance; ~~provided, that,~~ but any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
- a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
  - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
  - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
  - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
- a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
  - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years, to be served without benefit of parole. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years, to be served without benefit of parole. It is not

- a defense that the defendant did not know the age of a person protected under this subdivision.
- c. The court may not defer imposition of any sentence imposed under this subsection, but the court may suspend execution of no more than one-half of any sentence imposed under this subsection.
4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance is guilty of a class B felony and must be sentenced:
- a. For a first offense, to imprisonment for at least four years.
- b. For a second or subsequent offense, to imprisonment for at least five years.
- c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his the practitioner's professional practice, or except as otherwise authorized by this chapter ~~provided that~~, but any person whose ~~conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 may not be prosecuted under this subsection. ~~Any~~ Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony ~~except that any~~. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, is guilty of a class A misdemeanor ~~and any~~. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and

whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.

- ← 8. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. AMENDMENT. Section 54-21-25 of the North Dakota Century Code is amended and reenacted as follows:

54-21-25. Authority to contract with other governmental agencies for prisoners and juvenile delinquents. If the director of institutions the department of corrections and rehabilitation determines that adequate or suitable state facilities or services are not available for adult inmates or juvenile delinquents under his the director's control he the director may contract for same with the proper authorities of the United States, Canada, and any of its governmental subdivisions, another state, another agency in this state or a political subdivision of this state, or with any private or public correctional or treatment facility or agency. The state shall reimburse such entities at an amount to be determined by the state based upon the services the state determines are required for the housing and treatment of the inmates. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. An adult inmate or juvenile delinquent who is considered for transfer to another jurisdiction as herein provided, and who as an adult or as parent or guardian of a juvenile does not consent to the transfer, will be given notice of the pending transfer and a review by an institutional staff board including at least one member from the treatment staff, the security or housing staff, the administrative staff, and chaired by an individual designated by the director of institutions to determine the need and justification for a transfer. The findings of the review board will, if appropriate, be given to the adult inmate or juvenile delinquent or a representative or guardian, and in the case of adults, to the pardon board, and in the case of juveniles, to the designated juvenile court staff for their approval of the requested transfer. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of institutions, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$126,000, or so much thereof as may be necessary, to the department of corrections and rehabilitation for the purpose of this Act for the biennium beginning July 1, 1991, and ending June 30, 1993.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on July 1, 1992.

Disapproved April 17, 1991  
Filed April 18, 1991

## CHAPTER 733

SENATE BILL NO. 2509  
(Lindgren)

### INFRASTRUCTURE BY PRIVATE OPERATORS

AN ACT to provide for infrastructure construction, improvement, rehabilitation, operation, or management by private operators and to provide for development agreements between public authorities and private operators.

VETO

April 18, 1991

The Honorable Jim Kusler  
Secretary of State  
State Capitol  
600 East Boulevard  
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2509 provides for private sector construction and operation of public projects, such as bridges and highways, parks, buildings and many other facilities.

The bill grants extremely broad authority to state, counties, townships and cities to enter into agreements with private persons, corporations, partnerships, cooperatives, joint ventures and consortiums to construct, improve, rehabilitate, operate, manage or own "fee-based facilities." It also provides that the "facility" could be supported, in whole or in part, by a rental fee paid by a public authority from its general funds. This feature could bind the taxpayers for a long period of time to support a privatized facility without the capability of controlling changes in the public use of the facility.

While I believe certain privatization funded only by facility user fees may work, this encumbering of general revenue moneys is ill-advised.

Therefore, I veto Senate Bill 2509.

Sincerely,

GEORGE A. SINNER  
Governor

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

SECTION 1. Definitions. As used in this Act, unless the context or subject matter otherwise requires:

1. "BOT facility" means a build, operate, and transfer fee-based facility constructed, improved, or rehabilitated and afterward operated by a private operator who holds title to the facility subject to a development agreement that includes a provision that title will be transferred or revert to the public authority on expiration of an agreed term.
2. "BTO facility" means a build, transfer, and operate fee-based facility constructed, improved, or rehabilitated by a private operator who:
  - a. Transfers interest it may have in the facility to the public authority before operation begins; and
  - b. Operates the fee-based facility for an agreed term pursuant to a lease, management, or concession agreement.
3. "Development agreement" means a written agreement by and between a public authority and a private operator which memorializes the parties' agreement with respect to the construction, improvement, rehabilitation, ownership, or operation of a fee-based facility. A development agreement must satisfy the requirements of section 3 of this Act.
4. "Fee-based facility" means a facility that provides a service in which the charge is based on the level of service by users or a rental fee paid by a public authority. The facility may be a library, city hall, and an appurtenant building, a water or sewage treatment plant, or other public improvement; land lying within applicable rights of way; and other appurtenant rights or hereditaments that together comprise a project for which a private operator is authorized to operate or own and impose fees or derive a rent as expressed in the development agreement.
5. "Private operator" means a private person, a corporation or partnership, a cooperative or unincorporated association, a joint venture or consortium that constructs, improves, rehabilitates, owns, leases, operates, or manages a fee-based facility subject to this Act. The term includes related parties and entities that together perform some or all of these functions for the same facility.
6. "Public authority" means the state, a county, township, or city when ownership of or jurisdiction over a fee-based facility has been tendered to and accepted by said authority.

SECTION 2. Private operators. Notwithstanding any other provision of law, private operators may construct, improve, rehabilitate, own, lease, manage, and operate fee-based facilities subject to the terms of this Act. Private operators may mortgage, grant security interests in, and pledge their interests in, for a period not to exceed the length of the development agreement:

1. Fee-based facilities and their components;
2. Development, leases and concessions, and other related agreements; and
3. Income, profits, and proceeds of the fee-based facility.

SECTION 3. Public authority may enter into development agreements. A public authority may solicit or accept proposals from private operators for the constructing, improving, rehabilitating, operating, managing, and owning of a fee-based facility that will be situated in an area subject to the public authority's jurisdiction. After a hearing, the public authority may accept a proposal that it determines to be in the public interest. A public authority may negotiate and enter into a development agreement with any private operator.

SECTION 4. Contents of development agreements. Development agreements for fee-based facilities entered into pursuant to this Act may provide for private ownership of the facilities without reversion of title; for operating the facilities under leases or management contract; for BOT facilities or BTO facilities; or any other form of ownership or operation considered advisable by the public authority. Development agreements may permit the private operator to:

1. Assemble funds from any available source, including federal, state, and local grants, bond revenues, contributions, and pledges; and
2. Incorporate related improvements into the fee-based facility, subject to requirements of state and federal law.

Development agreements may also include grants of title, easements, rights of way, and leasehold estates that are necessary to the fee-based facility. In addition, a development agreement may authorize the private operator to charge variable rate fees based on time of day, characteristics of services, or other factors and measurement methods considered significant by the public authority for the particular facility.

SECTION 5. Right-of-way acquisition. Private operators may acquire right of way and property by donation, lease, or purchase. When necessary for the construction, alteration, addition, extension, or improvement of any project under this Act, a public authority may acquire any real or personal property by the law of eminent domain of this state and may lease the property or right of way to a private operator.

SECTION 6. Lease term. A lease for public facilities must be for terms of no more than fifty years and must be reviewed and may be revised every five years.

SECTION 7. Application of other law. This Act does not excuse private operators of fee-based facilities from the necessity of obtaining environmental, navigational, design, or safety approvals that would be required if the facility were constructed or operated by a public body.

SECTION 8. Public authority may facilitate projects.

1. A public authority may exercise any power possessed by it with respect to the development and construction of infrastructure



projects to facilitate the development and construction of infrastructure projects under this Act.

2. A public authority may provide services for which it is reimbursed with respect to preliminary planning, planning, environmental certification, and preliminary design of infrastructure projects.

SECTION 9. Development agreements - Mandatory provisions. Development agreements must require:

1. That the plans and specifications for the fee-based facility satisfy the public authority's standards of construction for infrastructure of the same functional classification;
2. For fee-based facilities to be incorporated into the existing infrastructure, that any applicable department or authority review and approve the facility to the same extent as it would for a similar publicly constructed facility;
3. That, after public notice, the private operator manage and operate the fee-based facility in cooperation with the applicable public authority and subject to any bylaws that the public authority and the private operator may from time to time mutually agree upon;
4. That the fee-based facility be subject to regular safety inspections by the applicable public authority;
5. That the anticipated fees, rental income, and revenues from the operation of the facility, or other sources of funding, or any combination thereof, be sufficient to pay the maintenance and operation costs for the facility, and principal of and interest on any evidence of indebtedness to finance the facility; and
6. Any other provisions negotiated by the parties.

SECTION 10. Cost recovery. Development agreements entered into under this Act may authorize private operators of fee-based facilities to impose a fee-based charge for the use of the facility and must require that the fee revenues be applied:

1. To repayment of indebtedness incurred for the fee-based facility;
2. To lease or fee-based concessions payments, if any;
3. To costs associated with the operation, administration, and maintenance of the facility; and
4. To reasonable reserves for future capital outlays, if any.

Residual fee revenues belong to the private operator, except for any royalties that may be payable to a public authority under the development agreement or a related fee-based concession agreement. After the expiration of any lease for a BTO facility, or after title has reverted for a BOT facility, the public authority may continue to charge a fee for the use of the facility.

**SECTION 11. Joint authority.** When a fee-based facility is or will be situated in the jurisdiction of more than one public authority, or is or will be an interstate or international facility, the applicable authorities concerned may enter into a compact to delegate to one or more of the authorities or a board appointed by the various authorities the authority to exercise all of the powers, duties, and functions of the other authorities regarding the fee-based facility, including the authority to negotiate and administer the development agreement and any related lease and fee-based concession agreement. In addition, if all public authorities having jurisdiction over a fee-based facility concur, title to or authority over the facility may be tendered to the agreed upon authority of choice, which may at its option accept the title of authority to administer pursuant to the development agreement and this section.

**SECTION 12. Property tax exemptions - Exemptions from bidding requirements.**

1. If approved by the governing body of the city, for property within city limits, or by the governing body of the county, for property outside city limits, new fee-based facilities are exempt from all ad valorem taxes.
2. For portions of the project that do not involve contractor ownership, the construction, improvement, rehabilitation, operation, and management of fee-based facilities by private operators under this Act are subject to all competitive bidding and procurement requirements otherwise applicable under state and local laws, rules, and ordinances, if so determined by resolution of the governing body of the public authority.

**SECTION 13. Relation to other law.** The rights, powers, and authority conferred by this Act are in addition to other rights, powers, or authority private operators and public authorities may have under other law. This Act does not supersede or repeal, expressly or by implication, any other law permitting the construction, improvement, rehabilitation, ownership, and operation of fee-based facilities by private operators.

Disapproved April 17, 1991  
Filed April 18, 1991

# MEASURE APPROVED OVER GOVERNOR'S VETO

## CHAPTER 734

### NATURAL GAS SALES TAX RATE

VETO

April 10, 1991

The Honorable Ronald Anderson  
Speaker of the House  
House Chamber  
State Capitol  
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1325 reduces the rate of sales tax on natural gas from five percent to two percent of gross receipts by December of 1994.

The fiscal impact is an estimated loss of \$400,000 this biennium, increasing to at least \$5 million per biennium in the years coming up. Even though I personally have tried in 1983 to correct this, it must be done with replacement revenue or we will be short of revenue for coming years.

Therefore, given the revenue constraints with which we are operating, we simply cannot remove any revenue source without replacement.

Therefore, I veto House Bill 1325.

Sincerely,

GEORGE A. SINNER  
Governor

NOTE: The Governor's veto of House Bill No. 1325 was not sustained. For the text of House Bill No. 1325 as approved see chapter 676.

# INITIATED MEASURES, DISAPPROVED

## CHAPTER 735

### SALES TAX INCREASE FOR EDUCATION

An initiated measure to create and enact new Sections to N.D.C.C. Chapters 57-39.2, 57-40.2, 57-40.3, 57-40.5 by increasing the tax on retail sales, purchases, or personal property for use in or brought into this state, and purchases of motor vehicles and purchases of aircraft not designed for agricultural purposes, to increase the tax on retail sale, storage, use, and consumption of mobile homes, farm machinery and repair parts, irrigation equipment, and purchases of aircraft designed for agricultural purposes, to change the bracket system used to determine the amount of sales tax added to a consumer's debt owed to a retailer, and to allocate money collected by the increase solely to fund elementary, secondary, adult and vocational education in the state of North Dakota to the extent of the appropriations to the Superintendent of Public Instruction and to the State Board of Vocational Education for the 1989-91 biennium.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1.) A new Section to Chapter 57-39.2 of the North Dakota Century Code, is hereby created and enacted to read as follows:

1. There is hereby imposed an additional tax of 1 percent upon the gross receipts of retailers from all sales at retail that are subject to tax imposed by Chapter 57-39.2.

SECTION 2. Amendment.) That Section 57-39.2-26 be amended and reenacted as follows: All money collected and received under this chapter, except monies collected under Section 1 and 4 of this act, shall be paid into the state treasury and shall be credited by the state treasurer to the general fund. Monies deposited with the commissioner as security for the payment of tax, penalties, or costs due shall be deposited and accounted for as provided in subsection 3 of section 57-39.2-12. Monies collected under Section 1 and 4 of this act shall be placed in the special fund as provided for in Section 9 of this act.

SECTION 3. Amendment.) That Section 57-39.2-08.2 of the North Dakota Century Code, be amended and reenacted as follows:

1. Except as otherwise provided in Subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 to \$0.15 .....	no tax
\$0.16 through \$0.20 .....	1¢ tax
\$0.21 through \$0.40 .....	2¢ tax
\$0.41 through \$0.60 .....	3¢ tax
\$0.61 through \$0.80 .....	4¢ tax
\$0.81 through \$1.00 .....	5¢ tax
Each additional \$1.00 - 5¢ additional tax, or	
each additional 20¢ or fraction thereof over	
\$1.00 - 1¢ additional tax.	

\$0.01 through \$0.08 .....	no tax
\$0.09 through \$0.24 .....	1¢ tax
\$0.25 through \$0.41 .....	2¢ tax
\$0.42 through \$0.58 .....	3¢ tax
\$0.59 through \$0.74 .....	4¢ tax
\$0.75 through \$0.91 .....	5¢ tax
\$0.92 through \$1.08 .....	6¢ tax
Each additional \$1.00 - 6¢ additional tax, or	
each additional 15¢ or fraction thereof over	
\$1.00 - 1¢ additional tax.	

2. On retail sales of mobile homes used for residential or business purposes, except as provided in Subsection 35 of Section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it ~~three~~ four percent of such price or charge.

SECTION 4.) A new Section to Chapter 57-40.2 of the North Dakota Century Code, is hereby created and enacted to read as follows:

1. There is hereby imposed an additional tax of 1 percent upon the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state and for the storage, use, and consumption in this state of tangible personal property not originally purchased for the storage, use and consumption in this state that are subject to tax imposed by Chapter 57-40.2.

SECTION 5.) A new Section to Chapter 57-40.3 of the North Dakota Century Code, is hereby created and enacted to read as follows:

1. There is hereby imposed an additional tax of 1 percent on the purchase price of any motor vehicle subject to tax imposed by Chapter 57-40.3

SECTION 6.) Amendment) That Section 57-40.3-10 of the North Dakota Century Code, be amended and re-enacted as follows:

All money collected and received under this chapter, except as provided for in Section 5 of the Act, shall be transmitted monthly by the registrar to the State Tax Commissioner and must be paid to the state treasurer to be transferred and credited to the general fund. Monies collected under Section 5 of this Act shall be placed in the special fund as provided in Section 9 of this Act.

SECTION 7.) A new Section to Chapter 57-40.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

1. There is hereby imposed an additional tax of 1 percent upon the purchase price of any aircraft purchased, acquired, leased, or rented which is subject to the tax imposed by Chapter 57-40.5.

SECTION 8.) Amendment.) That Section 57-40.5-09 of the North Dakota Century Code, be amended and re-enacted as follows:

1. All monies collected and received under this Chapter except monies collected under Section 7 of this Act shall be transmitted monthly by the Director to the State Tax Commissioner who shall pay them to the State Treasurer to be credited to the State General Fund. Monies collected under Section 7 of this Act shall be placed in the special fund as provided for in Section 9 of this Act.

SECTION 9.) A new Section to Chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

All monies collected and received under Sections 1,2,3,4,5,6,7, and 8 of this Act shall be placed into a special fund and shall be used and disbursed to support elementary, secondary, adult, and vocational education in the state of North Dakota. The monies placed into the special fund shall be disbursed by the State Treasurer on a monthly basis as follows:

(a) The Superintendent of Public Instruction shall receive 95 percent of the monies in the special fund and shall disburse said funds to support elementary, secondary, and adult education to the extent of the appropriation to the Superintendent of Public Instruction for the 1989-91 biennium.

(b) The State Board of Vocational Education shall receive 5 percent of the monies in the special fund and shall disburse said funds to support vocational education to the extent of the appropriation to the State Board of Vocational Education for the 1989-91 biennium.

In the event that monies paid into the special fund created herein shall exceed the appropriation to the Superintendent of Public Instruction and the State Board of Vocational Education for the 1989-91 biennium, the State Treasurer shall credit said monies to the general fund.

SECTION 10.) This Act is effective through June 30, 1991 and after that date is ineffective.

Disapproved June 12, 1990

52,610 to 74,207

NOTE: This was measure No. 4 on the primary election ballot.

## CHAPTER 736

**ROLAND TOWNSHIP GAMING CONSTITUTIONAL  
AMENDMENT**

An initiated measure for the amendment of section 25 of article XI of the Constitution of the State of North Dakota, relating to for-profit organizations conducting games of chance within the boundaries of Roland Township.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25 of Article XI of the Constitution of the State of North Dakota is hereby amended and re-enacted to read as follows:

Article XI, Section 25. The legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever, except as otherwise hereinafter set forth. ~~However,~~ The Legislative Assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. The legislative assembly shall authorize by law only private citizens and for-profit organizations to conduct games of chance, within the 1 January 1990 boundaries of Roland Township, Bottineau County, North Dakota and that the net proceeds from said private gaming shall inure to the benefit of such private citizens or organizations conducting said games of chance.

Disapproved November 6, 1990

73,649 to 155,534

NOTE: This was measure No. 5 on the general election ballot.

## CHAPTER 737

**ELECTRONIC GAMING DEVICES CONSTITUTIONAL  
AMENDMENT**

An initiated measure for the amendment of section 25 of article XI of the Constitution of the State of North Dakota, relating to allowing games of chance to be conducted by use of electronic video gaming devices and to permit such games to be conducted by for-profit entities.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25 of Article XI of the Constitution of the State of North Dakota is hereby amended and re-enacted to read as follows:

Article XI. Section 25. The Legislative Assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose ~~whatever~~, except as otherwise hereinafter set forth. ~~However, the~~ The Legislative Assembly ~~may~~ shall authorize by law bona fide nonprofit veterans' charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. In addition, games of chance in the form of electronic video gaming devices, shall be authorized to be conducted by private citizens, for profit entities, and nonprofit organizations. The video gaming devices must be placed only in licensed alcoholic beverage establishments. Further, said Legislative Assembly shall authorize that the net proceeds from the electronic video gaming devices shall inure to the benefit of such private citizens, for profit entities and nonprofit organizations conducting the games of chance.

Disapproved November 6, 1990

76,700 to 152,918

NOTE: This was measure No. 6 on the general election ballot.



## CHAPTER 738

**INSURANCE AGENT COMMISSION REBATES**

An initiated measure to create and enact a new subsection to section 26.1-04-03 of the North Dakota Century Code, relating to rebating of insurance agent commissions; to amend and reenact subsection 2 of section 26.1-04-05 and section 26.1-04-06 of the North Dakota Century Code, relating to rebates of insurance agent commissions; and to provide for retroactive application.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-04-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

This title does not prohibit an insurance agent from rebating all or any portion of the insurance agent's commission to the insured, as negotiated between the agent and the insured.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Offer, promise, allow, give, set off, or pay any rebate of the whole or any part of the premium payable on the policy ~~or the agent's commission thereon~~, or any special favor or advantage in the dividends, earnings, profits, or other benefits founded, arising, accruing, or to accrue thereon or therefrom.

SECTION 3. AMENDMENT. Section 26.1-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting certain rebates. An insurance broker, limited insurance representative, or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, ~~or all or any part of any agent's, insurance broker's, limited insurance representative's, or solicitor's commission thereon~~, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates.

SECTION 4. Retroactive application of Act. This Act is retroactive and authorizes rebates of commissions made before the enactment of this Act.

Disapproved November 6, 1990

25,825 to 201,326

NOTE: This was measure No. 7 on the general election ballot.

## CHAPTER 739

### **ELECTRONIC GAMING DEVICES STATUTORY PROVISIONS**

An initiated measure to provide for privatization of video gaming; and to provide a penalty.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

Section 1. Privatization of Video Gaming - Intent. The authorization of private gaming, in the form of video gaming only, requires the adoption of a necessary and desirable public policy regarding this form of gaming in the State of North Dakota. Therefore, it is necessary to:

1. Create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the electronic video gaming industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;
2. Protect legal private electronic video gaming activities from unscrupulous players and vendors and detrimental influences;
3. Protect the public from unscrupulous proprietors and operators of establishments that have such electronic video gaming devices for public use;
4. Protect the state and local governments from those who would conduct illegal activities that deprive those governments of tax revenues, as provided herein;
5. Protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating electronic video gaming activities;
6. Create a tax formula which enables the state, county, and cities to benefit financially from video gaming, as a consistent source of tax relief;
7. Encourage economic development through the use of electronic video gaming to enhance business activity and tourism in North Dakota;
8. Limit the number of electronic video gaming devices per location and further to limit the use of such devices in only those establishments that have retail liquor licensing authority;
9. Limit the amount of consideration waged in such electronic video gaming activities, to be consistent with a spirit of recreational gaming activities; and

10. Utilize sophisticated electronic equipment to monitor and maintain strict security and accountability in the use of said electronic video gaming devices.

#### Section 2. Definitions.

1. "Associated equipment" is any proprietary device, or part used in the manufacture or maintenance of a video gaming device, including integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors and metering devices.
2. "Credit" is a value of twenty-five cents.
3. "Licensing authority" is the Attorney General's office or such other authority as is designated by the Legislative Assembly.
4. "Licensed establishment" is any establishment owned or managed by an individual, partnership, corporation or association licensed to sell alcoholic beverages for consumption upon the premises where sold.
5. "Adjusted gross income" is money put into a video gaming device minus the value of credit vouchers issued.
6. "Person" is any person, partnership, corporation, or association.
7. "Video gaming device" is any electronic video gaming device that, upon insertion of a coin or currency, simulates the play of a game of chance, including keno, poker, and twenty-one, utilizing a video display and microprocessors in which, by chance, the player may win credits that can be redeemed for cash through the redemption of a paper credit voucher. The term does not include a machine that directly dispenses coins, cash or tokens.
8. "Video gaming device distributor" is any individual, partnership, corporation or association that distributes or sells video gaming devices or associated equipment in North Dakota.
9. "Video gaming device manufacturer" is any individual, partnership, corporation or association that assembles or produces video gaming devices or associated equipment for sale or use.
10. "Video gaming device operator" is any individual, partnership, corporation or association that places video gaming devices or associated equipment in a licensed establishment for public use.

Section 3. Levels of Licensure. A person may not hold a license or hold financial interest in or have substantial interest in more than one of the following levels.

1. Level 1
  - A. Video gaming device manufacturer.
  - B. Video gaming device distributor.
2. Level 2
  - A. Video gaming device operator.
  - B. Licensed establishment - the licensed establishment owns the video gaming device operated in the licensed establishment

- and gaming device operator.
- C. Licensed establishment - the licensed establishment does not own the video gaming device operated in the licensed establishment.

#### Section 4. Licensure and License Fees.

1. Each video gaming device manufacturer, distributor, operator, licensed establishment and video gaming device must be licensed by the licensing authority before any video gaming device or associated equipment is manufactured, distributed, sold or placed for public use in this state by that licensee. The annual license must be applied for before July 1 of each year and the fee for each license is:
  - A. Video gaming device manufacturer - Five Thousand Dollars (\$5,000.00).
  - B. Video gaming device distributor - Five Thousand Dollars (\$5,000.00).
  - C. Video gaming device operator - Two Thousand Dollars (\$2,000.00).
  - D. Video gaming device - One Hundred Dollars (\$100.00).
  - E. Licensed establishment - Fifty Dollars (\$50.00).
2. The video gaming device license fee must be deposited in the licensing authority's operating fund to be used for the central computer communications system as referenced by subsection 2 of Section 7. All other license fees collected shall be deposited in the state's general fund. All licenses issued by the licensing authority are renewable annually unless sooner relinquished, cancelled or revoked. No license is transferable or assignable. There is no proration of a license fee.

Section 5. Personal Qualifications for Licensure. To be licensed as a video gaming device operator, a natural person who is a sole proprietor, a partner in a partnership, a shareholder in a corporation or officer of an association must:

1. Be at least twenty-one years of age.
2. Be a resident of the State of North Dakota or, if a partnership, corporation, or association, the full equity interest of a partnership or the majority of the voting common stock ownership interest of a corporation or association must be held by residents of North Dakota.

Section 6. Background Investigation Required and Source of Payment for the Investigation.

1. Any person applying for a license as a video gaming device manufacturer, distributor, operator, or licensed establishment shall first submit to a personal background investigation by the licensing authority. This includes each partner of a partnership,

and each director and officer and all stockholders owning ten percent or more of the voting common stock of the corporation, parent or subsidiary corporation of a video gaming device manufacturer, distributor, operator or licensed establishment.

2. The licensing authority shall require the person seeking to be licensed to pay the anticipated actual costs of the personal background investigation in advance and, after completion of the background investigation, shall refund any overpayment or charge and collect an amount sufficient to reimburse the licensing authority for any underpayment of actual costs. The licensing authority may contract for the background investigation.

Section 7. Requirements of a Licensed Video Gaming Device. Each video gaming device licensed:

1. Must meet the manufacturing specification standards of the rules adopted by the licensing authority.
2. Must be linked under a central computer communications system to provide security, audit, and accounting information as required by the licensing authority. No communications system approved by the licensing authority may limit participation to only one manufacturer of video gaming devices by either the cost in implementing the necessary program modifications to communicate or the inability to communicate with the central communications system.
3. May not allow more than two dollars (eight credits) to be played on a game or award credits in excess of the value of one hundred twenty-five dollars per credit value of twenty-five cents played. The maximum prize per play is one thousand dollars. The potential prize payback structure must be at least eighty percent and not more than ninety-five percent of the value of the credits played. Free games are prohibited.

Section 8. Examination and Testing of Video Gaming Devices and Source of Payment for the Examination and Test. The licensing authority shall examine and test prototypes of video gaming devices and associated equipment of manufacturers seeking to license such devices. The licensing authority shall require the manufacturer seeking the examination, testing, and approval of a video gaming device to pay the anticipated actual costs of the examination and testing in advance and, after completion of the examination and test, shall refund any overpayment or charge and collect an amount sufficient to reimburse the licensing authority for any underpayment of actual costs. The licensing authority may contract for the examination and test of video gaming devices.

Section 9. General Restrictions.

1. A person under twenty-one years of age may not participate in placing a wager on any video gaming device. A video gaming device may be available for play only during the hours of business of the licensed establishment.
2. Any person involved with the license or operation of video gaming devices must be:

- A. A person of good character, honesty, and integrity.
  - B. A person whose prior activities, criminal record, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental to the conduct of gaming.
3. The licensing authority may prohibit a person from playing a video gaming device if the person violates any provision of this chapter or any rule adopted under this chapter.
  4. No person, except an employee or volunteer of a licensed establishment or the operator may conduct or assist in conducting gaming of any video gaming device.
  5. Each device must have the license prominently displayed thereon. Any device which does not display the license is contraband and subject to confiscation by any law enforcement officer. A violation of this subsection is a Class C felony.
  6. The premises where video gaming devices are operated, or where it is intended that the devices will be operated, must be open to inspection by the licensing authority, its agents and by representatives of the local governing body authorizing video gaming devices, and by law enforcement officials of any political subdivision.

Section 10. Limitation of Number of Video Gaming Devices that may be Placed at a Licensed Establishment. The placement of video gaming devices in a licensed establishment is subject to rules promulgated by the licensing authority. No more than five video gaming devices may be placed in any licensed establishment.

Section 11. Work Permits. The licensing authority may establish a centralized statewide work permit system to determine the identity, prior activities, and present employment of all employees of licensed video gaming operators in this state and may issue, renew, deny, suspend, and revoke work permits. The licensing authority may charge each gaming employee an annual work permit fee of twenty-five dollars and a fee of five dollars for each change of employment.

Section 12. Assessment of Monetary Fines. The licensing authority may impose monetary fines on licensed manufacturers, distributors, operators, and licensed establishments for failure to comply with any provision of this chapter or any rule adopted under this chapter. The monetary fine for each violation is a minimum of One Hundred Dollars and may not exceed Fifteen Thousand Dollars. This fine may be in addition to or in lieu of license suspensions or revocations.

Section 13. Gaming Tax Based on Adjusted Gross Income. The state's video gaming tax percentage is 18% of the adjusted gross income. The licensing authority shall deposit one-third of that tax collected in the general fund. The licensing authority shall forward two-thirds of the tax collected to the auditor of the city or county in which the video gaming

device is located, for deposit in the city or county treasury. Counties are not entitled to proceeds from taxes on income from video gaming devices located in incorporated cities and towns.

**Section 14. Assessment and Collection of Tax.** The licensing authority shall compute the state's tax amount and send a report, containing at least the video gaming device license number, total value of coins and currency inserted, total value of credit vouchers issued and the dollar tax amount due the state to the video gaming device operator within seven days after the end of each month. The licensing authority shall adopt rules by which the video gaming device operator shall pay the taxes due from a special, separate gaming tax account maintained by the operator. The licensing authority shall collect the tax from the operator's gaming tax account by electronic funds transfer within fifteen days after the end of each month.

**Section 15. Gaming Tax is in Lieu of Sales and Use Taxes.** The adjusted gross income of a video gaming device is subject to taxation as provided for in this chapter. Except for income tax, the gaming tax is in lieu of all other state or local taxation, including sales and use taxes, that would otherwise be based on the gaming activity of the devices.

**Section 16. Examination of books and records.** The licensing authority and its agents shall have the power to examine or cause to be examined the books and records of any licensed establishment authorized to operate video gaming devices to the extent that such books and records relate to any transaction connected with video gaming devices.

**Section 17. Restricted Use of Confidential Information.** Certain information and records of the licensing authority are confidential except for official purposes, including sharing with other regulatory agencies, and may not be disclosed except in accordance with a judicial order or as otherwise provided by law. Information and records considered confidential include:

1. Applications, credit checks and background investigations of video gaming manufacturers, distributors, operators, licensed establishments and other persons seeking or doing business with video gaming.
2. Marketing, financial or sales data, the disclosure of which may be harmful to the competitive position of North Dakota gaming, licensed manufacturers, distributors, operators, licensed establishments or other persons seeking or doing business with video gaming.

**Section 18. Powers and Duties of the Licensing Authority.** The licensing authority or the agents of the licensing authority may:

1. Inspect and examine all premises in which video gaming devices are operated or video gaming devices or associated equipment are manufactured, distributed, or stored.
2. Inspect all video gaming devices and associated equipment in, upon, or about such premises.
3. Seize and remove from such premises and impound any gaming related equipment, supplies, or books and records for the purpose of examination and inspection. When books or records are seized, the

licensing authority shall provide copies of those records or books within twenty-four hours of a specific request by the video gaming device manufacturer, distributor, operator or licensed establishment for a copy of the books or records seized.

4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, video gaming device manufacturers, distributors, operators and licensed establishments, including any affiliated companies, on their premises and in their presence concerning any income produced or expense incurred by any video gaming activity, and require verification of income, expense, and all other matters affecting the enforcement of this chapter.

Section 19. The Licensing Authority may Bring Civil Action for Collection of Fees and Tax and to Force Compliance.

1. Within three years after any amount of fees or tax required to be paid becomes due, the licensing authority may bring a civil action to collect the amount due. An action may be brought even though the person owing the fees or tax is not presently a gaming licensee.
2. The licensing authority may institute an action in any district court for declaratory injunctive relief against a person, whether or not the person is a gaming licensee, as the licensing authority deems necessary to prevent non-compliance with this chapter and the rules adopted pursuant to this chapter.

Section 20. Violation of Chapter or Rule - Misdemeanor - Forfeiture of Licensure - Ineligibility. Any person who knowingly makes a false statement in any application for a license or in any statement annexed thereto, or who fails to keep sufficient books and records as prescribed by the licensing authority or who falsifies any books or records so far as they relate to any transaction connected with operating video gaming devices or who violates any of the provisions of this chapter, any rule adopted under this chapter, or of any term of a license is guilty of a Class A misdemeanor. If convicted, the person forfeits any license issued to it pursuant to this chapter and is ineligible to reapply for a license for a period of time determined by the licensing authority.

Section 21. Cheating Devices or Fraudulent Schemes Unlawful - Penalty.

1. It is unlawful for any person playing or operating any video gaming device at a licensed establishment:
  - A. To use bogus or counterfeit coins or currency.
  - B. To employ or have on one's person any cheating device to facilitate cheating.
  - C. To willfully use any fraudulent scheme or technique.
  - D. To tamper or attempt to tamper with a video gaming device with the intent to interfere with the proper operation of the device, attempt or conspire to manipulate the outcome or the determination of credits or operation of a device, cause physical damage to the device, or physically tamper with the device by any other means.



- E. To alter or counterfeit a license.
  - F. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate any provision of this chapter or any rule adopted under this chapter.
  - G. To vandalize, misuse, abuse, or damage a video gaming device.
2. A person violating this section is guilty of a Class A misdemeanor unless the violation is of subdivisions A, B, C, D, or G of subsection 1 or the amount gained through the use of these items, schemes, or techniques results in a person obtaining over Five Hundred Dollars, then the offense is a Class C felony.

Section 22. Suspension or Revocation of License Based on Violations. The licensing authority may, by motion, based on reasonable ground or upon written complaint, suspend or revoke, under North Dakota Century Code Chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.

Section 23. Authority to Promulgate Administrative Rules. The licensing authority shall adopt rules in accordance with North Dakota Century Code Chapter 28-32, related but not limited to conduct and play of video gaming devices; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees; marking or identification of video gaming devices and associated equipment; licensing of manufacturers, distributors, operators, licensed establishments, and devices; video gaming device examination, testing, approval, and inspection procedures; specifications for manufacture of video gaming devices; methods and rules of play; protect and promote public interest; work permit system; ensure fair and honest games of chance; ensure that fees and taxes are paid; impose monetary fines and establish appeal procedures; maintenance and repair of video gaming devices; financial responsibility of licensees; and seek to prevent and detect unlawful gaming activity.

Section 24. Severability. If any section, 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 this chapter.

Disapproved November 6, 1990

82,019 to 145,973

NOTE: This was measure No. 8 on the general election ballot.

# **REFERRED MEASURES, DISAPPROVED**

## **CHAPTER 740**

### **LEGISLATIVE RETIREMENT**

Disapproval by referendum of House Bill No. 1586 of the Fifty-first Legislative Assembly, which provided for participation of members of the legislative assembly in the retirement program for public employees.

Disapproved December 5, 1989

29,452 to 219,355

NOTE: This was measure No. 2 on the special election ballot.

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**CHAPTER 741****MOTOR VEHICLE FUEL TAX RATE**

Disapproval by referendum of sections 2 and 3 of Senate Bill No. 2029 of the Fifty-first Legislative Assembly, which provided an increase in the rate of motor vehicle fuel and special fuel taxes.

Disapproved December 5, 1989

102,786 to 151,499

NOTE: This was measure No. 3 on the special election ballot.

## CHAPTER 742

### SALES AND USE TAX RATE

Disapproval by referendum of sections 1, 3, 5, 7, and 8 of Senate Bill No. 2458 of the Fifty-first Legislative Assembly, which provided an increase in sales, use, motor vehicle excise, and aircraft excise tax rates.

Disapproved December 5, 1989

118,108 to 135,833

NOTE: This was measure No. 4 on the special election ballot.

## CHAPTER 743

### SEATBELT USE

Disapproval by referendum of Senate Bill No. 2316 of the Fifty-first Legislative Assembly, which provided for required use of safety belts in certain motor vehicles.

Disapproved December 5, 1989

102,992 to 149,969

NOTE: This was measure No. 5 on the special election ballot.

## CHAPTER 744

### **ELECTRONIC VIDEO GAMING DEVICES**

Disapproval by referendum of House Bill No. 1641 of the Fifty-first Legislative Assembly, which provided for allowable use of electronic video gaming devices to conduct games of chance.

Disapproved December 5, 1989

89,073 to 152,563

NOTE: This was measure No. 6 on the special election ballot.

## CHAPTER 745

### INCOME TAX RATE

Disapproval by referendum of section 1 and subsection 2 of section 2 of Senate Bill No. 2201 of the Fifty-first Legislative Assembly, which provided for an increase in the rate of individual income taxes.

Disapproved December 5, 1989

99,866 to 153,457

NOTE: This was measure No. 7 on the primary election ballot.

## CHAPTER 746

### HEALTH CARE EDUCATION PROGRAM

Disapproval by referendum of House Bill No. 1604 of the Fifty-first Legislative Assembly, which provided for a program of comprehensive health education to promote public health and public health awareness.

Disapproved December 5, 1989

99,011 to 149,610

NOTE: This was measure No. 8 on the special election ballot.



# CONSTITUTIONAL AMENDMENTS, APPROVED

## CHAPTER 747

### RESOURCES TRUST FUND

House Concurrent Resolution No. 3022, chapter 795, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, to create and enact a new section to article X of the Constitution of North Dakota to provide that the resources trust fund is a constitutional trust fund; to provide for transfer of funds to the resources trust fund; and to provide an effective date.

#### STATEMENT OF INTENT

This measure authorizes the legislative assembly to dedicate a percentage of oil tax revenues to a special fund to be known as the resources trust fund, to be expended for water projects and energy conservation programs. This measure will become effective July 1, 1991.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is hereby created and enacted to read as follows:

The legislative assembly may provide by law for a percentage of revenue from taxes imposed on the extraction or production of oil to be allocated and credited to a special trust fund, to be known as the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation for:

1. Constructing water-related projects, including rural water systems; and
2. Funding of programs for energy conservation.

SECTION 2. TRANSFER. If this measure is approved by the voters, any amounts in the sinking fund established for payment of the North Dakota water development bonds, southwest pipeline series, and any amounts in the resources trust fund must be transferred to the resources trust fund as created by this measure.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1991, and applies to tax collections received on or after that date.

Approved June 12, 1990

71,333 to 50,320

NOTE: This was measure No. 2 on the primary election ballot.

## CHAPTER 748

### USE OF COAL TAX REVENUE

Senate Concurrent Resolution No. 4017, chapter 796, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, for the amendment of section 21 of article X of the Constitution of North Dakota, relating to use of coal severance taxes deposited in the permanent coal development trust fund; and to provide an effective date.

#### STATEMENT OF INTENT

This amendment allows up to fifty percent of coal severance tax moneys deposited in the permanent coal development trust fund during the biennium to be appropriated by the Legislative Assembly for lignite research, development, and marketing. The amendment becomes effective July 1, 1990.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 21 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 21 of article X of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 21. Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1990.

Approved June 12, 1990

63,851 to 56,261

NOTE: This was measure No. 3 on the primary election ballot.

# CONSTITUTIONAL AMENDMENTS, DISAPPROVED

## CHAPTER 749

### STATE GOVERNMENT REORGANIZATION

House Concurrent Resolution No. 3044, chapter 794, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, to create a new section to article V of the Constitution of North Dakota, relating to the reorganization of executive and administrative offices, boards, bureaus, agencies, commissions, and instrumentalities of state government.

#### STATEMENT OF INTENT

This measure creates a new section to the executive branch article of the Constitution that mandates reorganization of the many offices, boards, bureaus, agencies, commissions, and instrumentalities of state government into no more than fourteen departments other than constitutionally elected offices, boards, or commissions.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed creation of a new section to article V of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the next statewide election, in accordance with the provisions of section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article V of the Constitution of North Dakota is hereby created and enacted to read as follows:

For more effective administration, the governor may propose to the legislative assembly, from time to time, changes in the statutory allocation of functions, powers, and duties among and within the executive departments, other than those headed by constitutionally elective offices. A commission consisting of the governor, lieutenant governor, and three members of the legislative assembly selected by the legislative council shall, on or before February 1, 1991, propose the allocation of executive power to not more than fourteen departments, not including the departments under constitutionally elected officials or constitutional boards and commissions. Proposed changes under this section must be in special executive orders, setting forth the structural and all statutory changes, and submitted to both houses of the legislative assembly on the same day. If an executive order under this section is not disapproved by a majority of the members elected to either house of the legislative assembly within thirty legislative days, the order shall have the force of law when filed with the secretary of state or on a later day specified in the order.

Disapproved December 5, 1989

71,732 to 174,919

NOTE: This was measure No. 1 on the special election ballot.

## CHAPTER 750

**LIEUTENANT GOVERNOR AS PRESIDING OFFICER**

Senate Concurrent Resolution No. 4005, chapter 793, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, for the amendment of sections 8 and 13 of article IV, section 7 of article V, and section 9 of article XI of the Constitution of North Dakota, relating to election of presiding officers of the legislative assembly, legislative procedures, powers and duties of the lieutenant governor, and impeachment proceedings; and to repeal section 13 of article XI of the Constitution of North Dakota, relating to impeachment proceedings.

**STATEMENT OF INTENT**

This amendment removes the lieutenant governor as presiding officer of the Senate and provides that the presiding officer of the Senate must be elected from the membership of the Senate.

**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendments to sections 8 and 13 of article IV, section 7 of article V, section 9 of article XI, and repeal of section 13 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 8 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 8. ~~The~~ Each house of ~~representatives~~ shall elect one of its members to act as presiding officer at the beginning of each organizational session.

**SECTION 2. AMENDMENT.** Section 13 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house; ~~and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.~~

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one

subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly takes effect on July first after its filing with the secretary of state or ninety days after its filing whichever comes later, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

SECTION 3. AMENDMENT. Section 7 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 7. The powers and duties of the lieutenant governor shall be ~~to serve as president of the senate; and he may, when the senate is equally divided, vote on procedural matters, and on substantive matters if his vote would be decisive.~~ Additional duties shall be prescribed by the governor. If, during the vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

SECTION 4. AMENDMENT. Section 9 of article XI of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 9. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted

without the concurrence of two-thirds of the members elected. ~~When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.~~

SECTION 5. REPEAL. Section 13 of article XI of the Constitution of North Dakota is hereby repealed.

Disapproved June 12, 1990

48,967 to 71,452

NOTE: This was measure No. 1 on the primary election ballot.

# CHAPTER 751

## EFFECTIVE DATE OF LEGISLATION

House Concurrent Resolution No. 3005, chapter 798, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, for the amendment of section 13 of article IV of the Constitution of North Dakota, relating to the effective date of legislation.

### STATEMENT OF INTENT

This amendment provides that all legislation, except appropriation and tax measures, would be effective on August first after filing with the secretary of state or ninety days after filing if filed on or after August first and before January first of the following year. The effective date for appropriation and tax measures would remain July first.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the following proposed amendment to section 13 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1. AMENDMENT.** Section 13 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on July August first after its filing with the secretary of state, or if filed on or after August first and before January first of the following year ninety days after its filing ~~whichever comes later~~, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Disapproved November 6, 1990

99,362 to 112,490

NOTE: This was measure No. 1 on the general election ballot.



## CHAPTER 752

## JUDICIAL VACANCIES

House Concurrent Resolution No. 3040, chapter 799, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, for the amendment of section 13 of article VI of the Constitution of North Dakota, relating to the filling of judicial vacancies.

## STATEMENT OF INTENT

This amendment provides that a person appointed by the Governor to fill a vacancy on the supreme court or district court serves until the next general election. However, if the next general election occurs within one year after the appointment, the appointment continues until the following general election.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 13 of article VI of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article VI of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. A judicial nominating committee shall be established by law. Any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy for the remainder of the term. An appointment ~~shall continue until the next general election, when the office shall be filled by election for the remainder of the term~~ continues until the next general election, unless the next general election occurs within one year after the appointment, in which case the appointment continues until the following general election.

Disapproved November 6, 1990

96,635 to 118,164

NOTE: This was measure No. 2 on the general election ballot.

## CHAPTER 753

### BOARD OF HIGHER EDUCATION MEMBERS

Senate Concurrent Resolution No. 4021, chapter 797, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, for the amendment of subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the qualifications of the members of the state board of higher education.

#### STATEMENT OF INTENT

This amendment defines "graduate" for purposes of serving on the state board of higher education.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

2. a. The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state, and who shall have resided in this state for not less than five years immediately preceding their appointment, to be appointed by the governor, by and with the consent of the senate, from a list of names selected as hereinafter provided.

There shall not be on said board more than one graduate of any one of the institutions under the jurisdiction of the state board of higher education at any one time. "Graduate" means a person who has received a baccalaureate degree and does not include a person who has received an associate or advanced degree. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the state board of higher education for a period of two years following the termination of his employment.

On or before the first day of February, 1939, the governor shall nominate from a list of three names for each position, selected by the unanimous action of the president of the North

Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction, and, with the consent of a majority of the members-elect of the senate, shall appoint from such list as such state board of higher education seven members, whose terms shall commence on the first day of July, 1939, one of which terms shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for seven years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled.

Disapproved November 6, 1990

104,793 to 109,437

NOTE: This was measure No. 3 on the general election ballot.

## CHAPTER 754

## STATE AUDITOR IN LEGISLATIVE BRANCH

Senate Concurrent Resolution No. 4043, chapter 800, 1989 Session Laws, proposed by the Fifty-first Legislative Assembly of the State of North Dakota, to create a new section to article IV of the Constitution of North Dakota, relating to the office of state auditor; to amend sections 12 and 13 of article V of the Constitution of North Dakota, relating to the office of state auditor; and to provide an effective date.

## STATEMENT OF INTENT

This amendment would remove the office of state auditor from the executive branch and place the office in the legislative branch effective in 1992.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed creation of a new section to article IV of the Constitution of North Dakota, and the following proposed amendments to sections 12 and 13 of article V of the Constitution of North Dakota, are hereby agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article IV of the Constitution of North Dakota is hereby created and enacted to read as follows:

At the times and places of choosing members of the legislative assembly, the qualified electors of the state shall choose an auditor. At the time of election the auditor must have attained the age of twenty-five years and must be a qualified elector. The auditor shall hold office at the seat of government for a term of four years beginning in 1992, and until a successor is elected and duly qualified. The term begins on December first following the auditor's election. The auditor shall audit the receipt, expenditure, and use of public funds, as provided by law, and is responsible to the legislative assembly in the performance of those duties and any other duties imposed by law.

SECTION 2. AMENDMENT. Section 12 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 12. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, ~~auditor,~~ treasurer, superintendent of public instruction, commissioner of insurance, an attorney general, a commissioner of agriculture and labor, and a tax commissioner, who shall have attained the

age of twenty-five years and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government for the term of four years beginning with the year 1965, and until their successors are elected and duly qualified; but no person shall be eligible for the office of treasurer for more than two consecutive terms.

The board of railroad commissioners shall hereafter be known as the public service commission and the members of the board of railroad commissioners as public service commissioners and the powers and duties now or hereafter granted to and conferred upon the board of railroad commissioners are hereby transferred to the public service commission.

The public service commissioners shall have the qualifications of state electors, have attained the age of twenty-five years, be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, hold office at the seat of government and until their successors are elected and duly qualified. As each of the three public service commissioners now holding office completes his term, his successor shall be elected for a term of six years.

The legislative assembly may by law provide for a department of labor, which, if provided for, shall be separate and distinct from the department of agriculture, and shall be administered by a public official who may be either elected or appointed, whichever the legislative assembly shall declare; and if such a department is established the commissioner of agriculture and labor provided for above shall become the commissioner of agriculture.

SECTION 3. AMENDMENT. Section 13 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. The powers and duties of the secretary of state, ~~auditor,~~ treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general and commissioner of agriculture and labor shall be prescribed by law. In the event that the legislative assembly shall establish a separate and distinct department of labor, the powers and duties of the officer administering such department of labor shall be prescribed by law.

SECTION 4. EFFECTIVE DATE. If approved by the voters, sections 2 and 3 of this measure become effective on January 1, 1993.

Disapproved November 6, 1990

74,425 to 136,546

NOTE: This was measure No. 4 on the general election ballot.

# CONSTITUTIONAL AMENDMENTS, PROPOSED

## CHAPTER 755

SENATE CONCURRENT RESOLUTION NO. 4069  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)  
(Approved by the Committee on Delayed Bills)

### VETERANS' COMPENSATION

A concurrent resolution to create and enact a new section to the Constitution of North Dakota, relating to payment of adjusted compensation to North Dakota veterans of United States military involvement in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States and authorizing an appropriation or issuance of bonds of the state to provide necessary funds.

#### STATEMENT OF INTENT

This measure allows the state to provide compensation to certain resident North Dakota veterans. The veterans entitled to compensation are those who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict or who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict. This measure allows the Legislative Assembly to provide an appropriation or to provide for issuance of bonds of the state to provide necessary funds.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the next statewide election, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section of the Constitution of North Dakota is created and enacted as follows:

The legislative assembly may provide for the payment of adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States or to heirs of North Dakota residents who were members of the regular active duty armed forces and who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States. The legislative assembly may provide a direct appropriation or provide for the issuance, sale, and delivery of bonds of the state of North Dakota in such principal amounts as determined by the legislative assembly to be necessary for the payment of adjusted compensation under this section. Adjusted compensation under this section may be paid at such rates, terms of service, and conditions as the legislative assembly provides.

Filed April 3, 1991

## CHAPTER 756

HOUSE CONCURRENT RESOLUTION NO. 3016  
(Representative Kretschmar)  
(Senator Holmberg)

### EFFECTIVE DATE OF LEGISLATION

A concurrent resolution for the amendment of section 13 of article IV of the Constitution of North Dakota, relating to the effective date of legislation.

#### STATEMENT OF INTENT

This amendment provides that all legislation, except appropriation and tax measures, would be effective on August first after filing with the secretary of state or ninety days after filing if filed on or after August first and before January first of the following year. The effective date for appropriation and tax measures would remain July first.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 13 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on ~~July~~ August first after its filing with the secretary of state, or if filed on or after August first and before January first of the following year ninety days after its filing ~~whichever comes later~~, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Filed March 6, 1991



## CHAPTER 757

### SENATE CONCURRENT RESOLUTION NO. 4020 (Lips)

## STATE LANDS AND MINERAL INTEREST EXCHANGES

A concurrent resolution for the amendment of section 6 of article IX of the Constitution of North Dakota, relating to certain exchanges of land and mineral rights.

#### STATEMENT OF INTENT

This amendment allows for the exchange of land between the board of university and school lands and private owners and allows for the exchange of all mineral interests with the approval of the legislative assembly.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 6 of article IX of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. No original grant school or institutional land shall be sold for less than the fair market value thereof, and in no case for less than ten dollars (\$10.00) per acre, provided that when lands have been sold on contract and the contract has been canceled, such lands may be resold without reappraisal by the board of appraisal. The purchaser shall pay twenty (20) percent of the purchase price at the time the contract is executed; thereafter annual payments shall be made of not less than six (6) percent of the original purchase price. An amount equal to not less than three (3) percent per annum of the unpaid principal shall be credited to interest and the balance shall be applied as payment on principal as credit on purchase price. The purchaser may pay all or any installment or installments not yet due to any interest paying date. If the purchaser so desires, he may pay the entire balance due on his contract with interest to date of payment at any time and he will then be entitled to proper conveyance.

All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, and notice of such sale shall be published once each week for a period of three weeks prior to the day of sale in a legal newspaper published nearest the land and in the newspaper designated for the publication of the official proceedings and legal notices within the county in which said land is situated.

No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of the contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, the contract of sale for such land shall, if the board of university and school lands so determine, by it, be declared null and void. No contract of sale heretofore made under the provisions of this section of the constitution as then providing shall be affected by this amendment, except prepayment of principal may be made as herein provided.

Any of said lands that may be required for townsite purposes, schoolhouse sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, airplane landing fields, fairgrounds, public highways, railroad right of way, or other railroad uses and purposes, reservoirs for the storage of water for irrigation, irrigation canals, and ditches, drainage ditches, or for any of the purposes for which private lands may be taken under the right of eminent domain under the constitution and laws of this state, may be sold under the provisions of this article, and shall be paid for in full at the time of sale, or at any time thereafter as herein provided. Any of said lands and any other lands controlled by the board of university and school lands, including state ~~coal~~ mineral interests, ~~may~~ with the approval of ~~said~~ the board, ~~may~~ be exchanged for lands and ~~coal~~ mineral interests of the United States, the state of North Dakota ~~or~~ any county or municipality thereof as the legislature may provide, or any private individual or entity as the legislative assembly may provide, and the lands so acquired shall be subject to the trust to which the lands exchanged therefor were subject, ~~and the state shall reserve all mineral and water power rights in land so transferred, except coal mineral interests approved for exchange by the board of university and school lands under this section.~~

When any of said lands have been heretofore or may be hereafter sold on contract, and the purchaser or his heirs or assigns is unable to pay in full for the land purchased within twenty years after the date of purchase and such contract is in default and subject to being declared null and void as by law provided, the board of university and school lands may, after declaring such contract null and void, resell the land described in such contract to such purchaser, his heirs or assigns, for the amount of the unpaid principal, together with interest thereon reckoned to the date of such resale at the rate of not less than three (3%) percent, but in no case shall the resale price be more than the original sale price; such contract of resale shall be upon the terms herein provided, provided this section shall be deemed self-executing insofar as the provisions for resale herein made are concerned.

## CHAPTER 758

HOUSE CONCURRENT RESOLUTION NO. 3035  
(Representatives Rydell, Hokana)  
(Senators Mushik, Holmberg)

### BICENTENNIAL TRUST FUND

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota, relating to the creation of a Bicentennial trust fund; and to provide an effective date.

#### STATEMENT OF INTENT

This amendment would create a Bicentennial trust fund, the principal and interest of which is to be released on January 1, 2089, to a Bicentennial Commission, or if a Bicentennial Commission is not in existence on January 1, 2089, to the Governor, for use in commemorating and celebrating the 200th birthday of the state of North Dakota.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1992, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is created and enacted as follows:

The bicentennial trust fund is a permanent trust fund to be used for the purpose of commemorating and celebrating the bicentennial of the state of North Dakota. The interest earned on the money in the fund accrues to the bicentennial trust fund. On January 1, 2089, or as soon thereafter as practicable, the principal and interest in the trust fund must be transferred to the bicentennial commission or, if no bicentennial commission is in existence on January 1, 2089, to the governor, for expenditure to commemorate and celebrate the bicentennial of the state of North Dakota. Any amounts held by the state treasurer in trust for the North Dakota bicentennial commission pursuant to Senate Bill No. 2301 enacted by the fifty-second legislative assembly must be transferred to the bicentennial trust fund.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on January 1, 1993.

Filed April 4, 1991

# HOUSE CONCURRENT RESOLUTIONS

## CHAPTER 759

HOUSE CONCURRENT RESOLUTION NO. 3001  
(Legislative Council)  
(Interim Budget Committee on Human Services)

### MENTAL HEALTH MONITORING

A concurrent resolution directing the Legislative Council to monitor the continued development of a continuum of services for the mentally ill and chemically dependent including expanded community services and related changes in the role of the State Hospital.

WHEREAS, pursuant to North Dakota Century Code Section 50-06-06.5, which was a recommendation resulting from a 1985-86 study by the Legislative Council's interim Budget Committee on Human Services, the Department of Human Services has developed a plan for an integrated, multidisciplinary continuum of service for mentally ill individuals; and

WHEREAS, during the 1987-88 interim the Legislative Council's Budget Committee on Human Services studied the role and function of the State Hospital in the provision of services to the mentally ill and chemically dependent, and during the 1989-90 interim the Legislative Council's Budget Committee on Human Services reviewed the plan for expanding community services for the chronically mentally ill and chemically dependent and the future role of the State Hospital; and

WHEREAS, the implementation of the plan included the appropriation of an additional \$3.6 million of state funds during the 1989-91 biennium for additional community services for the mentally ill and chemically dependent; and

WHEREAS, appropriate, quality support services are necessary for the successful treatment and integration of the mentally ill and chemically dependent into the community; and

WHEREAS, the Legislative Council's interim Budget Committee on Human Services, in monitoring the department's implementation of the plan during the 1989-90 interim, expressed a concern that adequate community services may not be currently available to accommodate the demand, due in part to a reduction in the population at the State Hospital; and

WHEREAS, the committee was informed the department's 1991-93 budget request for community services for the mentally ill and chemically dependent does not include sufficient funds to meet all the needs identified by the regional human service centers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council monitor the continued development of a continuum of services for the mentally ill and chemically dependent,

including expanded community services, the need for adequate, quality support services especially in the area of direct patient care, and related changes in the role of the State Hospital, the related fiscal impact for the 1993-95 biennium of any proposed changes, and the extent to which adequate community services are available; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 760

HOUSE CONCURRENT RESOLUTION NO. 3002  
(Legislative Council)  
(Interim Budget Committee on Long-Term Care)

### PUBLIC ASSISTANCE STUDY

A concurrent resolution directing the Legislative Council to study the implementation of federal Family Support and Medicare Catastrophic Coverage Acts of 1988, as amended, to determine the financial impact of the Acts during the 1993-95 biennium and to review the effectiveness of changes to the system of delivering public assistance to North Dakota families and individuals.

WHEREAS, federal welfare reform legislation, known as the Family Support Act of 1988, requires North Dakota to develop a job opportunities basic skills (JOBS) program to assist individuals in transition from public assistance to independent support by providing them with education and training activities to assist them in obtaining employment; and

WHEREAS, the Act also requires North Dakota to provide the necessary case management, child care, transitional child care, transitional medical care, and expanded aid for families with dependent children (AFDC) for two parent families with unemployed or underemployed parents; and

WHEREAS, the Medicare Catastrophic Coverage Act of 1988, as amended, places additional financial requirements on North Dakota's Medicaid plan by requiring the state to pay Medicare premiums for certain low income persons, provide Medicaid coverage for children and pregnant women at an expanded eligibility level, and allow additional protection of assets and resources of persons whose spouses are in nursing homes and covered by Medicaid; and

WHEREAS, Congress is considering legislation that would make significant changes to the provision and funding of child care, and may also consider other legislation that may impact the implementation of these Acts; and

WHEREAS, if Congress makes significant changes to these Acts, the 1993 Legislative Assembly needs to be informed of the related financial impact for the 1993-95 biennium;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the implementation of the federal Family Support and Medicare Catastrophic Coverage Acts of 1988, as amended, to determine the financial impact of the Acts during the 1993-95 biennium and to review the effectiveness of changes to the system of delivering public assistance to North Dakota families and individuals; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 761

HOUSE CONCURRENT RESOLUTION NO. 3006  
(Legislative Council)  
(Interim Legislative Management Committee)

### ANNUAL LEGISLATIVE SESSION STUDY

A concurrent resolution directing the Legislative Council to study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994.

WHEREAS, in 1976 the Constitution of North Dakota was amended to allow the Legislative Assembly to meet in regular session for 80 natural days and to provide that days spent in regular session need not be consecutive; and

WHEREAS, after seven sessions of operating under the 80 natural day provision the Legislative Assembly requested the Legislative Council to study the legislative process during the 1989-90 interim, with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session; and

WHEREAS, during that study information was received on the South Dakota Legislature, which meets for a 40-day session in odd-numbered years and a 35-day session in even-numbered years, and the Wyoming Legislature, which meets for a 40-day general session in odd-numbered years and 20-day budget session in even-numbered years; and

WHEREAS, the complexities of governing the state require that the Legislative Assembly meet in annual session beginning in 1993 and 1994; and

WHEREAS, further legislative study is needed for the development of a specific procedure for an odd-numbered year session and an even-numbered year session;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study and establish procedures necessary to implement annual sessions of the Legislative Assembly beginning in 1993 and 1994; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 20, 1991

## CHAPTER 762

HOUSE CONCURRENT RESOLUTION NO. 3007  
(Dorso, Gorman)

### STUDENT AID PROGRAM FAIRNESS URGED

A concurrent resolution urging the North Dakota Congressional Delegation to assure fairness in student aid programs.

WHEREAS, tomorrow's complex economy will demand increasing numbers of skilled workers; and

WHEREAS, only some of the skills our workforce will need to assure our future economic prosperity in an increasingly competitive world economy are taught in traditional four-year colleges; and

WHEREAS, 70 percent of all jobs over the next decade will require some form of technical education beyond high school; and

WHEREAS, only 50 percent of high school graduates will go to college and 42 percent of those students will not obtain a college degree; and

WHEREAS, access to student aid for individuals regardless of socioeconomic status is the basic premise upon which the federal student financial assistance programs were founded;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges each member of the North Dakota Congressional Delegation, during the reauthorization of the Higher Education Act of 1965, to address the human capital needs of this nation's workforce for the year 2000 and beyond by recognizing the diversity of postsecondary education options available to students with a variety of needs and goals and assuring that financial aid is neutral and not giving undue advantage to one type of education over another; to restore confidence and integrity in the student aid programs by making every effort to prevent fraud and abuse in the federal student aid programs and requiring all postsecondary institutions to provide information on the cost, educational requirements, chances of succeeding, and employment or continuing education possibilities experienced by graduates; to assure fairness in the student aid programs and provide students with the financial opportunity to choose among all schools by making student aid programs understandable and the application system appropriate to the individual; and to guarantee access to student aid on the basis of type of schools, default rates, and programs chosen; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the North Dakota Congressional Delegation.

Filed March 19, 1991



## CHAPTER 763

HOUSE CONCURRENT RESOLUTION NO. 3010  
(Representatives Jensen, Svedjan, Rydell)  
(Senator Holmberg)

### STATE HEALTH CARE POLICY STUDY

A concurrent resolution directing the Legislative Council to study the need for and feasibility of adopting and implementing a state health policy for the purpose of providing basic medical and health care to all citizens of the state.

WHEREAS, the American health care system continues to decline in its ability to provide affordable, accessible, quality care to those who need that care; and

WHEREAS, neither the federal government nor state governments have determined whether health care is a basic, fundamental human right or only a commodity available for purchase by those most financially able; and

WHEREAS, there is a reliance by health care providers on costly technologies the impact of which is aggravated by the lack of any regional mechanism for providing those technologies in a manner that would reduce cost to the consumer and expand accessibility; and

WHEREAS, if the inadequacies of the health care delivery system are seen only as a crisis affecting the poor, whatever remedial measures that are devised will either be ineffective in addressing systemic problems or will aggravate present problems; and

WHEREAS, insurance companies find it necessary to increase the cost of insurance premiums while the coverages provided are reduced, thereby creating an impression in the minds of many that the health care system is driven more by a concern for financial gain than by sensitivity to the health care needs of consumers; and

WHEREAS, while the spiraling cost of health care is of national import, it directly affects each citizen of this state by limiting the accessibility and affordability of health care; and

WHEREAS, a North Dakota health task force has been formed for the purpose of creating a proposed health policy for North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the need for and feasibility of adopting and implementing a state health policy for the purpose of providing basic medical and health care to all citizens of the state; and

BE IT FURTHER RESOLVED, that the membership of the committee to which the study is assigned include citizen members representing the health care industry, labor, employers, and principal affected executive agencies; and

BE IT FURTHER RESOLVED, that the Legislative Council receive and consider, on an ongoing basis, the reports and recommendations of the North Dakota health task force; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 764

HOUSE CONCURRENT RESOLUTION NO. 3013  
(Representatives Jensen, Wald, Clayburgh)  
(Senators Holmberg, Ingstad, Goetz)

### HIGHER EDUCATION FUNDING STUDY

A concurrent resolution directing the Legislative Council to study methods of funding higher education.

WHEREAS, it is a legislative responsibility to determine and provide adequate funding for each higher education institution in North Dakota; and

WHEREAS, the current method of determining funding for each higher education institution, which is based on the number of students at a particular institution, may be an inappropriate measure of the needs of the institution; and

WHEREAS, alternative funding methods need to be examined, including determining funding based on program needs of each institution;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the adequacy and appropriateness of the current funding method used to determine higher education institution appropriations and consider alternative methods, including program based funding for North Dakota higher education institutions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 6, 1991

## CHAPTER 765

### HOUSE CONCURRENT RESOLUTION NO. 3014 (Kretschmar)

## UNIFORM STATE LAWS COMMISSION ANNIVERSARY

A concurrent resolution recognizing the 100th anniversary of the National Conference of Commissioners on Uniform State Laws.

WHEREAS, on August 24, 1892, representatives from seven states--Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania--met as a conference of commissioners to explore the most effective manner in which to effect uniformity of law to ease problems developing between increasingly interdependent states; and

WHEREAS, by 1912 every state had appointed commissioners to the National Conference of Commissioners on Uniform State Laws; and

WHEREAS, over its decades of existence the conference has recommended proposals concerning wills and written instruments; problems occasioned by interstate commerce; partnerships and child labor; aviation and public utilities; torts and trusts; commercial transactions; probate procedures; child custody jurisdiction, anatomical gifts, and class actions; and commercial and family law issues; and

WHEREAS, North Dakota recognized the benefit of these uniform and model acts, which provide comprehensive legislative solutions to basic state problems, by joining the national conference in 1893; by enacting its first uniform act, the negotiable instruments law, in 1899; and by adopting 107 uniform acts; and

WHEREAS, since joining the conference in 1893, the 36 commissioners who have represented North Dakota have promoted the principles of the national conference, including betterment of the law, enhancement of a federal-state system of government, and insistence of the principle of uniformity only when that principle best serves the interests of the individual states and their citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly of North Dakota recognizes the 100th anniversary of the National Conference of Commissioners on Uniform State Laws and its contributions to the betterment of the law through promotion of uniformity in the laws when uniformity best serves the interests of the states; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the president of the National Conference of Commissioners on Uniform State Laws and to each member of the North Dakota Commission on Uniform State Laws.

Filed March 19, 1991

## CHAPTER 766

HOUSE CONCURRENT RESOLUTION NO. 3015  
(G. Berg, Thompson, Skjerven, Tollefson)

### **POLITICAL SUBDIVISION EFFICIENCY STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility of improving the efficiency of political subdivision government structure and services.

WHEREAS, political subdivisions are confronted with increasing demands for services and operate on limited budgets; and

WHEREAS, services and functions of political subdivisions should be constantly monitored to discover opportunities to improve the efficiency and services furnished by political subdivisions; and

WHEREAS, the growing importance of computer technology and its potential to improve the efficiency and services of political subdivision governments should be studied; and

WHEREAS, studies and recommendations of groups interested in the function of local government should be monitored by the Legislative Council;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of improving the efficiency and services of political subdivisions, with emphasis on the potential of computer usage in this respect, and monitor studies and recommendations of groups interested in the function of political subdivision governments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 767

HOUSE CONCURRENT RESOLUTION NO. 3017  
(Representatives DeMers, R. Berg, Ring)  
(Senators Schoenwald, Nalewaja, Mathern)

### EMPLOYMENT FOR OLDER WORKERS STUDY

A concurrent resolution directing the Legislative Council to study employment opportunities for older workers, including barriers, benefit and retirement program options, and workplace education and training, so that older workers can maintain their economic security.

WHEREAS, approximately 28,000 North Dakotans age 55 and older are below 125 percent of the poverty guidelines; and

WHEREAS, adequate health care coverage may not be available for many North Dakotans, particularly those between 55 and 65 years of age who are not yet eligible for Medicare and may not be eligible for retirement benefits; and

WHEREAS, many older workers perceive that they will be subject to age discrimination in the labor market and, therefore, do not even make the attempt to find employment; and

WHEREAS, a declining number of young workers are entering the workforce and older workers can help fill growing worker shortages because many are willing and able to work beyond normal retirement age; and

WHEREAS, employers should be encouraged to provide workers with ongoing training because the workplace is rapidly changing and new technology requires people to update their skills continually through life-long education and job training; and

WHEREAS, employers should be encouraged to recruit older workers and redesign jobs through programs like job sharing, working from home, and flexible work schedules, to make jobs more attractive for older workers; and

WHEREAS, because traditional benefit and retirement programs can be counterproductive and create barriers to continued employment, other benefit and retirement program options should be explored for those who wish to work beyond normal retirement age; and

WHEREAS, because, according to statistics, older workers use less sick leave, switch jobs less often, are more dependable, and possess better work habits, employers should be educated to overcome myths regarding older workers and encouraged to recruit older workers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study employment opportunities for older workers, including myths and barriers to their employment, nontraditional benefit and retirement program options which encourage alternatives to full retirement, and continued education and training programs, so that older workers can continue to work and maintain their economic security; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 20, 1991

## CHAPTER 768

### HOUSE CONCURRENT RESOLUTION NO. 3018

(Representatives Peterson, Payne, Kloubec, Dorso, Gorman, Gabrielson, Schneider, Scherber, Soukup, Bernstein, R. Berg, Larson, Pyle, Belter, Dalrymple)  
(Senators Mathern, Tennesfos, Kelly, Peterson, Lindgren, Nelson)

## FM ACRO TEAM RECOGNITION

A concurrent resolution recognizing the FM Acro Team for their national prominence and designating the team as Official Goodwill Ambassadors of North Dakota.

WHEREAS, the FM Acro Team, comprised of talented young women from the Fargo-Moorhead area under the directorship and coaching of Mr. Jim Simle, has achieved national prominence through performances in all parts of the United States before hundreds of thousands of people at National Basketball Association, National Football League, and major college sporting events; and

WHEREAS, the enthusiastic and talented performances of the FM Acro Team never fail to bring the crowd to its feet in ovation and leave North Dakotans with immense pride that this group is from our state; and

WHEREAS, the goodwill already, and yet to be, generated by the FM Acro Team is deserving of official recognition;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the FM Acro Team is recognized for their national prominence and the team is hereby designated as "Official Goodwill Ambassadors of North Dakota"; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the FM Acro Team and their coach and director Mr. Jim Simle.

Filed January 29, 1991



## CHAPTER 769

HOUSE CONCURRENT RESOLUTION NO. 3019  
(Representatives Skjerven, Urlacher)  
(Senator Graba)

### STATE MANDATES STUDY

A concurrent resolution directing the Legislative Council to study the impact of state mandates on political subdivisions and to develop a procedure for the funding of new programs, services, or functions that the Legislative Assembly mandates on political subdivisions.

WHEREAS, the Legislative Assembly mandates political subdivisions to carry out or perform certain programs, services, or functions; and

WHEREAS, these mandates have an impact on political subdivision's budgets, often in the middle of a budget year; and

WHEREAS, these mandates are often not accompanied by a revenue source or state appropriation; and

WHEREAS, the state should be responsible for providing funding or a funding source for mandates on political subdivisions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact of state mandates on political subdivisions and develop a procedure for the funding of new programs, services, or functions that the state mandates on political subdivisions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings, and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 770

HOUSE CONCURRENT RESOLUTION NO. 3020  
(Representative Kretschmar)  
(Senator Satrom)

### JOINT POWERS EXERCISE STUDY

A concurrent resolution directing the Legislative Council to study North Dakota laws relating to the joint exercise of governmental powers by political subdivisions to determine whether those laws unnecessarily inhibit the broad authority conferred by the state constitution for joint powers agreements among political subdivisions.

WHEREAS, "joint powers" agreements for the cooperative or joint administration of powers among political subdivisions of the state, including counties, cities, townships, park districts, and school districts, are an essential means for providing opportunities for innovation, creativity, and efficiency in the delivery of essential services by political subdivisions to the citizens of North Dakota, and for positioning those political subdivisions for effective governance in the twenty-first century; and

WHEREAS, the people of this state, through the Constitution of North Dakota, Article VII, Section 10, have provided political subdivisions with broad authority to enter into joint powers agreements with other political subdivisions, subject to limitations that may be imposed by the Legislative Assembly or home rule charter; and

WHEREAS, North Dakota Century Code Chapter 54-40 also provides political subdivisions with broad authority to enter into joint powers agreements; however, that chapter and other statutory provisions impose specific procedural requirements or limitations on that authority, or make reference to particular forms of joint powers agreements, which have raised questions regarding statutory interpretation and have caused confusion with respect to the authority of political subdivisions to enter into joint powers agreements; and

WHEREAS, state laws should not unnecessarily inhibit cooperative agreements among political subdivisions, but rather, the Legislative Assembly should further encourage these efforts by addressing the needs of political subdivisions that desire to utilize joint powers agreements, including the identification and development of model agreements and the provision of appropriate incentives;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study laws relating to the joint exercise of governmental powers by political subdivisions, including any statutes scheduled for future repeal pursuant to legislation enacted by the Fifty-second Legislative Assembly, to determine whether those laws unnecessarily inhibit political subdivisions from entering into joint powers

agreements with other political subdivisions pursuant to the broad authority conferred by the state constitution for those agreements; and

BE IT FURTHER RESOLVED, that the Legislative Council study possible sources and methods for the identification, development, and dissemination of model joint powers agreements for use by political subdivisions, and the provision of appropriate incentives to encourage political subdivisions to enter into joint powers agreements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 771

HOUSE CONCURRENT RESOLUTION NO. 3021  
(Representatives Kloubec, Schneider)  
(Senators Heigaard, Nelson)

### OVERTURN SALES TAX DECISION URGED

A concurrent resolution urging Congress to adopt legislation to overturn the 1967 United States Supreme Court National Bellas Hess decision.

WHEREAS, the United States Supreme Court in 1967 in the National Bellas Hess v. Illinois Department of Revenue decision ruled that states cannot require out-of-state catalog companies to collect and remit sales tax if no physical presence is apparent; and

WHEREAS, adopted legislation of the fiftieth North Dakota Legislative Assembly defined a "retailer" with apparently sufficient definition to include an out-of-state catalog company as having nexus with the state of North Dakota; and

WHEREAS, enforcement efforts by the state of North Dakota to bring out-of-state catalog companies into compliance with the collection and remittance of sales tax has been thwarted by a recent North Dakota district court ruling affirming that the defendant did not have sufficient nexus with the state of North Dakota; and

WHEREAS, the state of North Dakota has lost an estimated five to ten million dollars per year in uncollected sales taxes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Congress of the United States to take immediate and aggressive legislative action to overturn the 1967 United States Supreme Court National Bellas Hess decision, and to allow states to require out-of-state catalog companies to collect and remit sales taxes on sales to customers within their respective states; and

BE IT FURTHER RESOLVED, that copies of this resolution be forward by the Secretary of State to each member of the North Dakota Congressional Delegation.

Filed April 1, 1991

## CHAPTER 772

HOUSE CONCURRENT RESOLUTION NO. 3022  
(Representatives St. Aubyn, Timm, Rennerfeldt)  
(Senator Evanson)

### SAFE DRINKING WATER ACT STUDY

A concurrent resolution directing the Legislative Council to study the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities.

WHEREAS, the Congress of the United States has enacted the Safe Drinking Water Act to protect ground water quality and to prevent contamination of drinking water supplies; and

WHEREAS, the United States Environmental Protection Agency has been charged with implementing the provisions of the federal Safe Drinking Water Act; and

WHEREAS, the Legislative Assembly has declared it to be the policy of this state that safe supplies of drinking water are essential to the maintenance of public health and welfare; and

WHEREAS, the Legislative Assembly has designated the State Department of Health and Consolidated Laboratories as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and has authorized the department to take all actions necessary and appropriate to secure for the state the benefit of the federal Safe Drinking Water Act and any grants made under the Act; and

WHEREAS, the cost to local North Dakota communities of constructing water treatment facilities and conducting water tests pursuant to the Act may be significant; and

WHEREAS, only a small portion of treated water is actually used for human consumption; and

WHEREAS, the availability of aid and assistance from federal and state agencies such as the United States Environmental Protection Agency and the North Dakota Department of Health and Consolidated Laboratories should be fully explored; and

WHEREAS, the Legislative Council should undertake a study of what measures should be implemented to assist North Dakota communities in complying with the federal Safe Drinking Water Act;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the effects of compliance with the federal Safe Drinking Water Act on North Dakota and its communities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 20, 1991

## CHAPTER 773

HOUSE CONCURRENT RESOLUTION NO. 3023  
(Representatives Meyer, Gates)  
(Senators Peterson, Wogsland, Kelsh)

### EDUCATION ADMINISTRATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of various methods for redesigning the administration of education in North Dakota.

WHEREAS, it is imperative that the North Dakota educational system, as a whole, develop a sense of mission and common direction that can guide the cooperative development of a comprehensive and integrated educational strategy to prepare children and adults for life and work in the 21st Century; and

WHEREAS, a unified approach to the implementation of state education policy is essential in times when the resources available for education are limited; and

WHEREAS, coordination within the state's educational system is essential for many reasons, including the preparation and transition of public and nonpublic high school graduates to postsecondary education, the provision of varied educational opportunities for all schoolchildren, and the professional development of teachers for our elementary and secondary schools; and

WHEREAS, to maintain the efficient and effective organization of state government, including the state's educational system, it is properly the duty of the Legislative Assembly to continuously review and coordinate the functions of state government, to provide greater accountability for the operations of that government, to establish a more responsive administrative structure that provides significantly improved government services to the state's citizens, to identify opportunities to save and avoid costs by improving state government organization, and to offer an organizational structure that is appropriate for the unique economic, social, and political environment of the state; and

WHEREAS, it would be both prudent and timely for the Legislative Assembly to undertake a comprehensive review of the state's current administrative structure for the delivery of education services and programs to determine whether that structure represents the most effective and efficient organization necessary to position North Dakota for effective educational governance in the 21st Century;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of various methods for redesigning the administration of education in North

Dakota, including consideration of consolidating into a single department of state government, by the year 2000, the functions associated with the state board of vocational education, the office of superintendent of public instruction, the department of public instruction, the state board of public school education, and the state board of higher education; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 19, 1991



**CHAPTER 774**

HOUSE CONCURRENT RESOLUTION NO. 3024  
(Nicholas, Nowatzki)

**FEDERAL CROP INSURANCE IMPROVEMENT URGED**

A concurrent resolution urging the federal government to fully fund, simplify, and improve the federal crop insurance program.

WHEREAS, from 1981 through 1990, the federally backed multiple peril crop insurance program has provided North Dakota farmers with over \$5 billion in protection on growing crops; and

WHEREAS, this insurance has protected North Dakota farmers and their farm credit resources from financially disastrous crop losses due to insurable causes beyond their control; and

WHEREAS, this protection has contributed significantly to help stabilize the whole economy of the economy of rural communities throughout the state of North Dakota; and

WHEREAS, farmers have seen marked improvements in the crop insurance program since the federal government began to utilize the expertise and efficiency of the private crop insurance industry; and

WHEREAS, the private sector is prepared to assume a larger role in improving the administration and efficiency of the program for the benefit of farmers and taxpayers; and

WHEREAS, the crop insurance reforms of the 1990 farm bill provide promise that the farmers of this state can have the added protection of improved coverages in the future;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the President and the Congress of the United States are respectfully urged to continue to fully fund the program in the future and that the Secretary of Agriculture of the United States is encouraged to fully exercise all of the authority provided by the Federal Crop Insurance Act to improve coverage, simplify the program administration, and improve the program efficiency through the maximum utilization of the resources of the private crop insurance industry so as to achieve an evermore effective crop insurance program for the decade of the 1990's that will better serve the risk management needs of the farmers of this state and the nation; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the North Dakota Congressional Delegation.

Filed March 19, 1991

## CHAPTER 775

HOUSE CONCURRENT RESOLUTION NO. 3025  
(Representative Martinson)  
(Senator Satrom)

### HOUSE AND SENATE EMPLOYEE COMPENSATION

A concurrent resolution designating House and Senate employees and fixing their compensation.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That for the Fifty-second Legislative Assembly the following persons are employed and appointed as employees of the House and Senate and are to be paid the daily wages opposite their respective names in accordance with their positions:

	HOUSE	
Roy Gilbreath, Chief Clerk		\$95.00
Jeane Marschke, Assistant Chief Clerk		80.00
Barbara Middaugh, Desk Reporter		89.00
Lance Hagen, Bill Clerk		74.00
Shawn Ackre, Sergeant-at-Arms		74.00
Darlyne Clausnitzer, Secretary to the Speaker		74.00
Mazie Patchen, Secretary to the Majority Leader		80.00
Al Hausauer, Staff Assistant to the Majority Leader		74.00
Melody Hanson, Secretary to the Minority Leader		80.00
Kathleen Joyce, Staff Assistant to the Minority Leader		74.00
Theola Stetson, Chief Stenographer and Payroll Clerk		74.00
Lois Schmidt, Stenographer		62.00
Sharon Jensen, Stenographer		62.00
Sandi Hohbein, Stenographer		62.00
Ardis Thompson, Stenographer		62.00
Kate Hanlon, Stenographer		62.00
Barbara Seyfert, Typist		62.00
Candace Makeeff, Typist		62.00
Judy Frink, Chief Assistant Committee Clerk		68.00
Barb Klein, Appropriations Committee Clerk		76.00
Nancy Hayes, Assistant Appropriations Committee Clerk		68.00
Breezy Kohls, Assistant Appropriations Committee Clerk		68.00
Rhonda Otto, Assistant Appropriations Committee Clerk		68.00
Judy Hoffman, Committee Clerk		68.00
Joan VonRueden, Committee Clerk		68.00
Janice Stein, Committee Clerk		68.00
Jonathan Thomson, Committee Clerk		68.00
Sandy Schafer, Committee Clerk		68.00
Andrea Howe, Committee Clerk		68.00
Kristi Sagsveen, Committee Clerk		68.00
Lucy Hugelen, Committee Clerk		68.00
Lisa Peterson, Committee Clerk		68.00

Mona Heustis, Committee Clerk	68.00
Doris Leingang, Assistant Committee Clerk	65.00
David Hougen, Deputy Sergeant-at-Arms	62.00
Jerome Moszer, Assistant Sergeant-at-Arms	58.00
Kirk Larson, Assistant Sergeant-at-Arms	58.00
Bernice Clark, Assistant Sergeant-at-Arms	58.00
John Power, Assistant Sergeant-at-Arms	58.00
Shane Burthold, Assistant Sergeant-at-Arms	58.00
Alphonse Koenigsman, Assistant Sergeant-at-Arms	58.00
Lloyd Putney, Assistant Sergeant-at-Arms	58.00
Peter Schafer, Supply Room Coordinator	58.00
Mark Zimmerman, Chief Page and Bill Book Clerk	65.00
Richard Stenberg, Assistant Chief Page and Bill Book Clerk	62.00
Cindy Kephart, Journal Page	58.00
Barbara Larson, Desk Page	58.00
Phyllis Connolly, Desk Page	58.00
Mike Boyd, Desk Page	58.00
Brett Nilles, Page and Bill Book Clerk	58.00
Tommy Debele, Page and Bill Book Clerk	58.00
Carl Strum, Page and Bill Book Clerk	58.00
Nancy Thompson, Page and Bill Book Clerk	58.00
Merry Hook, Page and Bill Book Clerk	58.00
Andi Thon, Page and Bill Book Clerk	58.00
Robbie Jewett, Page and Bill Book Clerk	58.00
Mike Peterson, Page and Bill Book Clerk	58.00
Marion Bassingwaite, Page and Bill Book Clerk	58.00
Aaron Dalke, Page and Bill Book Clerk	58.00
Kevin Carney, Page and Bill Book Clerk	58.00
Valeria Ciavarella, Page and Bill Book Clerk	58.00
Jim Weber, Page and Bill Book Clerk	58.00
John Larson, Page and Bill Book Clerk	58.00
Fay Pitzer, Page and Bill Book Clerk	58.00
Althea Yantzer, Page and Bill Book Clerk	58.00
Lorraine Moos, Telephone Attendant	58.00
Lois Borke, Telephone Attendant	58.00
Irma Holmstrom, Telephone Attendant	58.00
Betty Heinrich, Telephone Page	58.00
Peggy Puetz, Information Desk Attendant	58.00
Eli Nemer, Chief Bill and Journal Room Clerk	68.00
Herman Jacobsen, Bill Room Clerk	58.00
Ilona Richey, Bill Room Clerk	58.00
Burnetta Barth, Bill Room Clerk	58.00
John Schmidt, Bill Room Clerk	58.00
Faye Caya, Bill Room Clerk	58.00
Frank Zent, Journal Room Clerk	58.00
Hella Keller, Journal Room Clerk	58.00
Charles Holmes, Parking Lot Attendant	58.00
Eugene Reynolds, Janitor (partial pay only)	54.00
Joe Emineth, Janitor (partial pay only)	45.00
Francis Scharosch, Janitor (partial pay only)	38.00
Helen Just, Janitor (partial pay only)	37.00

## SENATE

Marion Houn, Secretary of the Senate	\$95.00
Bob Dykshoorn, Assistant Secretary of the Senate	80.00
Sally Paul, Desk Reporter	89.00
Myrna Lyng, Bill Clerk	74.00

Doug Nordby, Sergeant-at-Arms	74.00
Sandi Kershaw, Secretary to Majority Leader	80.00
Wanda Scheid, Staff Assistant to Majority Leader	74.00
Jan Harmon, Secretary to Minority Leader	80.00
Dan Austin, Staff Assistant to Minority Leader	74.00
Jane Schiele, Chief Stenographer and Payroll Clerk	74.00
Michelle Schumacher, Stenographer	62.00
Roxie Dietrich, Stenographer	62.00
JoDee Fandrich, Stenographer	62.00
Mary Schmitz, Chief Committee Clerk	74.00
Carin Noriega, Appropriations Committee Clerk	76.00
Shad Stasney, Assistant Appropriations Committee Clerk	68.00
Dolores Boutilier, Committee Clerk	68.00
Shelly Brink, Committee Clerk	68.00
Jodi Friskop, Committee Clerk	68.00
Roberta Holle, Committee Clerk	68.00
Mary Marthaller, Committee Clerk	68.00
Audrey Myers, Committee Clerk	68.00
Nancy Pfenning, Committee Clerk	68.00
Colleen Popelka, Committee Clerk	68.00
Jeannette Shaw-Lynch, Committee Clerk	68.00
Rayne Thomas, Committee Clerk	68.00
Brenda Huff, Assistant Committee Clerk	65.00
Clayton Litchfield, Deputy Sergeant-at-Arms	62.00
Kevin Urness, Deputy Sergeant-at-Arms	62.00
Vernon Erickson, Assistant Sergeant-at-Arms	58.00
Wallace Becker, Assistant Sergeant-at-Arms	58.00
Chris Dahl, Assistant Sergeant-at-Arms	58.00
Diana Schlosser, Chief Page and Bill Book Clerk	65.00
Darren Huber, Desk Page	58.00
Nancy Ludwig, Journal Page	58.00
Linda Putz, Page and Bill Book Clerk	58.00
George Schempp, Page and Bill Book Clerk	58.00
James Sears, Page and Bill Book Clerk	58.00
Carol Smith, Page and Bill Book Clerk	58.00
Jeffrey Spitzer, Page and Bill Book Clerk	58.00
Renaë Doan, Page and Bill Book Clerk	58.00
Stephanie Fisher, Page and Bill Book Clerk	58.00
Brian Overton, Page and Bill Book Clerk	58.00
Clara Miller, Chief Telephone Attendant	62.00
Shirley Pasicznyk, Telephone Attendant	58.00
Bernice Asbridge, Telephone Attendant	58.00
Phyllis Rogstad, Telephone Attendant	58.00
Ruby Stadick, Telephone Attendant	58.00
Beth Bakke, Telephone Page	58.00
Mary Defender-Wilson, Information Desk Attendant	58.00
Selma Carlson, Bill Room Clerk	58.00
Patricia Hoffner, Bill Room Clerk	58.00
Delano Huston, Bill Room Clerk	58.00
Ledores Robey, Bill Room Clerk	58.00
Nettie Monroe, Journal Room Clerk	58.00
Walter Schramm, Parking Lot Attendant	58.00
Lucas Giesinger, Janitor (partial pay only)	54.00
Ronald Glaser, Janitor (partial pay only)	33.00
Keith Harrison, Janitor (partial pay only)	33.00

BE IT FURTHER RESOLVED, that each employee of the Fifty-second Legislative Assembly is entitled to an additional one dollar per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least forty-five days, as either an employee of the House or the Senate, and to receive this additional compensation, which may not exceed five dollars per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 30, 1991

## CHAPTER 776

### HOUSE CONCURRENT RESOLUTION NO. 3026 (Kretschmar)

#### REAPPORTIONMENT PLAN STUDY

A concurrent resolution directing the Legislative Council to study and develop a legislative reapportionment plan or plans.

WHEREAS, the Legislative Assembly has the primary responsibility for reapportioning the state into legislative districts; and

WHEREAS, the demographic data necessary to complete the reapportionment task must be based on the 1990 federal decennial census; and

WHEREAS, the results of the 1990 federal decennial census will not be available to the Legislative Assembly in sufficient time to permit the Legislative Assembly to consider a legislative reapportionment plan during the regular session of the Fifty-second Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study legislative reapportionment and develop a legislative reapportionment plan or plans for use in the 1992 primary; and

BE IT FURTHER RESOLVED, that the Legislative Council be encouraged to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts must be compact and of contiguous territory except as is necessary to preserve county and city boundaries as legislative district boundary lines and so far as is practicable to preserve current legislative district boundaries;
2. Legislative districts may have a population variance from the largest to the smallest in population not to exceed nine percent of the population of the ideal district except as is necessary to preserve county and city boundaries as legislative district boundary lines and so far as is practicable to preserve current legislative district boundaries;
3. No legislative district may cross the Missouri River;
4. Senators elected in 1990 may finish their terms except that in those districts where over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators must stand for reelection in 1992; and

BE IT FURTHER RESOLVED, that the plan or plans developed by the Legislative Council contain options for the creation of house subdistricts in any senate district that exceeds three thousand square miles; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to a reconvened or special session of the Fifty-second Legislative Assembly.

Filed April 12, 1991

**CHAPTER 777**

HOUSE CONCURRENT RESOLUTION NO. 3027  
(Representatives Ring, DeMers, Oban)  
(Senators Evanson, Heinrich, Mushik)

**LANDFILL GROUND POLLUTION STUDY**

A concurrent resolution directing the Legislative Council to study the current conditions and the feasibility of reducing ground pollution in North Dakota's landfills.

WHEREAS, North Dakota's population is expected to increase in future years, so waste refuse will increase in future years; and

WHEREAS, effective disposal of refuse in landfills is an integral factor that could decrease landfill refuse in future years; and

WHEREAS, it is in the best interest of all North Dakotans to have accurate data and information about the condition of and possible reduction of North Dakota landfills for prevention of water and land pollution; and

WHEREAS, it is in the best interest of all North Dakotans to be encouraged to precycle, recycle, and use biodegradable products to avoid disposal of harmful toxic wastes in our landfills; and

WHEREAS, by establishing a need to increase recycling, North Dakota could pursue economic possibilities developed directly from recycling efforts in our state or combined efforts from surrounding states and Canada; and

WHEREAS, North Dakota is proud to be one of the most pollution-free states in the United States of America and should take a preventative stance to maintain and preserve this status for future generations;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and ramifications of reducing the ground pollution of North Dakota landfills, with an emphasis on encouraging recycling efforts to preserve and protect our land and water; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 27, 1991



## CHAPTER 778

HOUSE CONCURRENT RESOLUTION NO. 3028  
(Representatives Kloubec, Schneider)  
(Senators Heigaard, Nelson)

### **VETERANS' BENEFIT EXTENSION URGED**

A concurrent resolution urging Congress to extend veterans' benefits to National Guard and other reserve component personnel who have been ordered to active federal duty for Operation Desert Shield and Operation Desert Storm.

WHEREAS, the President of the United States, with the consent of the Congress, has engaged armed forces of the United States in Operation Desert Storm to liberate Kuwait and counter the threat of invasion to Saudi Arabia by Iraq; and

WHEREAS, units and personnel of the North Dakota National Guard along with other reserve component units and personnel have been ordered to active duty for an indefinite period for Operation Desert Shield and Operation Desert Storm; and

WHEREAS, additional National Guard and other reserve component units and personnel may be ordered to active duty for Operation Desert Storm; and

WHEREAS, National Guard and other reserve component personnel who have been ordered to active duty for Operation Desert Shield and Operation Desert Storm will be separated from families for an indefinite period, will incur business losses, will be absent from college study for one or more semesters, will suffer other personal hardships, and will be "in harm's way"; and

WHEREAS, all National Guard and other reserve component personnel should be commended for their voluntary membership in the armed forces of the United States; and

WHEREAS, this nation must properly and fairly assist all military personnel who have been ordered to active duty for Operation Desert Shield and Operation Desert Storm to return to civilian life when they are released from active duty; and

WHEREAS, many members of the National Guard and other reserve components may not be considered "veterans" upon their release from active duty for Operation Desert Shield and Operation Desert Storm and may be denied veterans' benefits because of discriminatory and outdated federal laws; and

WHEREAS, all members of the National Guard and other reserve components who have been ordered to active federal duty for Operation Desert Shield and Operation Desert Storm should be considered "veterans" for all veterans' benefit purposes; and

WHEREAS, the Legislative Assembly fully supports all military personnel serving in the Persian Gulf area;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges Congress to amend all appropriate federal laws to extend veterans' benefits to all members of the National Guard and other reserve components who are ordered to active federal duty for Operation Desert Shield and Operation Desert Storm; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Defense, the chairmen of the Senate and House Armed Services Committees, and each member of the North Dakota Congressional Delegation.

Filed February 4, 1991

## CHAPTER 779

HOUSE CONCURRENT RESOLUTION NO. 3029  
(Representatives Flaagan, R. Anderson, Nichols)  
(Senators Vosper, Langley, Wogsland)

### SOUND ENERGY POLICY URGED

A concurrent resolution urging the President and the Congress of the United States to develop expeditiously a sound and comprehensive national energy policy utilizing renewable agricultural commodities, such as ethanol, in the production of energy and lubrication products.

WHEREAS, oil embargoes instituted by the Organization of Petroleum Exporting Countries cartel during the mid 1970s held the entire industrialized world hostage to outrageous and predatory oil pricing; and

WHEREAS, the recent invasion of Kuwait by Iraq has resulted in the disruption of world oil supplies, and the political instability of the Middle East has caused extreme volatility in world oil markets; and

WHEREAS, the Food, Agriculture, Conservation, and Trade Act of 1990 falls far short of providing cost of production to the nation's agricultural producers; and

WHEREAS, the market price for most major farm commodities is substantially below the cost of producing those commodities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the President and the Congress of the United States to develop expeditiously a sound and comprehensive national energy policy utilizing renewable agricultural commodities, such as ethanol, in the production of energy and lubrication products; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly urges that the President request and that the Congress of the United States appropriate funds within the budgets of the Department of Defense and the Department of Agriculture to establish this sound and comprehensive energy program; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the Secretary of Energy, the Secretary of Defense, the Secretary of Agriculture, the Speaker and the majority and minority leaders of the United States House of Representatives, the President and the majority and minority leaders of the United States Senate, and each member of the North Dakota Congressional Delegation.

Filed April 1, 1991

## CHAPTER 780

HOUSE CONCURRENT RESOLUTION NO. 3030  
(Representatives Kloubec, Schneider)  
(Senators Heigaard, Nelson)

### GLOBAL WARMING STUDY BY CONGRESS URGED

A concurrent resolution urging the United States Congress to support research to determine whether there is scientific basis for the global warming theory prior to adoption of proposals or policies intended to reduce emissions of carbon dioxide from the use of coal, oil, and natural gas.

WHEREAS, carbon dioxide is a naturally occurring gas in the earth's atmosphere vital to plant growth and is a byproduct of burning coal, oil, and natural gas which, in the United States, accounts for less than 10 percent of the world's total man-made greenhouse gases; and

WHEREAS, carbon or related energy taxes and limits on carbon dioxide emissions are being proposed in Congress and by the international community as a method of controlling carbon dioxide emissions; and

WHEREAS, no clear consensus among the world's scientific community exists on whether the earth's climate is warming as a result of carbon dioxide emissions from the use of coal, oil, and natural gas, and existing technology has proven incapable of accurately predicting future climate change; and

WHEREAS, carbon or related energy taxes or limits on carbon dioxide emissions would adversely impact the ability of North Dakota's energy resources to compete in the energy marketplace, preventing development of our state's abundant lignite, oil, and natural gas reserves; and

WHEREAS, carbon or related energy taxes or limits on carbon dioxide emissions would adversely impact the jobs, business volume, and tax revenue generated by our state's energy industry and result in higher per capita taxes on energy consumers in this region due to lignite's low Btu content; and

WHEREAS, carbon or related energy taxes or limits on carbon dioxide emissions would result in serious adverse economic consequences for this region and the nation by severely restricting economic growth and development and by raising costs for nearly all types of productive activity, particularly energy and agriculture;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly of North Dakota urges the Congress of the United States to provide funds and facilities for research to determine if there is sound scientific basis to support the theory that the

earth's climate is warming as a result of carbon dioxide emissions from the worldwide use of coal, oil, and natural gas; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly of North Dakota urges the United States Congress to include in its studies of global warming a complete scientific analysis of potential impacts resulting from increased carbon dioxide in the atmosphere; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly of North Dakota urges the United States Congress to encourage the United States State Department or other departments, agencies, or representatives of the United States government to refrain from entering into international agreements or taking official action committing the United States to restricted use of coal, oil, and natural gas or imposing energy taxes on such use as a means of limiting carbon dioxide emissions; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly of North Dakota is opposed to efforts by the United States Congress to impose additional energy taxes or limits on carbon dioxide emissions from the nation's use of coal, oil, and natural gas; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the United States President; the United States Secretaries of State, Energy, Commerce, Agriculture, Transportation, Treasury, and Interior; the administrator of the Environmental Protection Agency; the chairmen and members of the Senate Energy and Natural Resources Committee, the Senate Environment and Public Works Committee, and the House Energy and Commerce Committee; and to each member of the North Dakota Congressional Delegation.

Filed February 13, 1991

## CHAPTER 781

HOUSE CONCURRENT RESOLUTION NO. 3031  
(Representatives Scherber, Myrdal)  
(Senators Thane, O'Connell)

### GOVERNMENT COMMUNICATIONS STUDY

A concurrent resolution directing the Legislative Council to study the impact and potential benefits to be derived from the use of electronic communications in government services.

WHEREAS, it is the responsibility of the Legislative Assembly to ensure the wisest and most efficient use of the state's resources; and

WHEREAS, there is a need to reduce the cost of sharing data collected by the state and local government; and

WHEREAS, electronic mail and messaging is becoming the preferred method of communicating; and

WHEREAS, significant savings for voice communications can be achieved through volume contracts; and

WHEREAS, the increasing capabilities made available through the use of electronic communications should be utilized by the state to improve the efficiency of state and local government and to more beneficially use limited state and local resources; and

WHEREAS, for example, the use of electronic communications to transfer documents via computer technology or through the use of facsimile technology may more efficiently and effectively utilize state and local resources;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact and potential benefits to be derived from the use of electronic communications in government services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 27, 1991

## CHAPTER 782

HOUSE CONCURRENT RESOLUTION NO. 3032  
(Bateman, Brown, Schmidt, R. Berg)

### SEVERED MINERAL INTERESTS STUDY

A concurrent resolution directing the Legislative Council to study the problems caused by and associated with severed mineral interests.

WHEREAS, large areas of North Dakota are or may be subject to oil and gas exploration and development; and

WHEREAS, the continued development of oil and gas resources in this state is very important to the economic well-being of the state and its people; and

WHEREAS, landowners must absorb the increased cost of updating abstracts if the mineral estate underlying their surface estate has been severed from that surface estate; and

WHEREAS, the surface owner must bear the entire burden of property taxes when the mineral estate has been severed from the surface estate; and

WHEREAS, the title to abandoned severed mineral interests should revert to the owner of the surface estate overlying the abandoned severed mineral interests who may return the severed mineral interests to valuable use; and

WHEREAS, a thorough study should be undertaken by the Legislative Council of feasible methods to discover and categorize the severed mineral interests in this state before any action concerning this issue is undertaken by the Legislative Assembly; and

WHEREAS, oil and gas exploration and development companies incur increased expenses in procuring drilling title opinions and division order opinions; and

WHEREAS, delays in royalty payments caused by division order problems adversely affect the state's royalty owners;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems caused by and associated with severed mineral interests; and

BE IT FURTHER RESOLVED, that the study include a review of relevant court decisions and the statutes of other oil and gas producing states; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 783

HOUSE CONCURRENT RESOLUTION NO. 3033  
(Gorder, Skjerven)

### **HANDICAPPED CHILD EDUCATION ASSISTANCE URGED**

A concurrent resolution urging Congress to provide assistance for the education of all handicapped children, as provided for in Public Law 94-142.

WHEREAS, in 1975, Congress passed Public Law 94-142, the "Education of the Handicapped Act"; and

WHEREAS, in Public Law 94-142, Congress recognized that the special education needs of handicapped children were not being fully met; and

WHEREAS, in Public Law 94-142, Congress stated that developments in the training of teachers and in diagnostic and instructional procedures and methods have advanced to the point that given appropriate funding, state and local educational agencies could and would provide effective special education and related services to meet the needs of handicapped children; and

WHEREAS, in Public Law 94-142, Congress noted that the financial resources given to state and local educational agencies are inadequate to meet the special educational needs of handicapped children; and

WHEREAS, in Public Law 94-142, Congress authorized maximum state entitlements of 40 percent of the average per-pupil expenditure for special education pupils; and

WHEREAS, Congress supports special education in the amount of approximately eight percent of the average per-pupil expenditure for special education pupils;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges Congress to provide funding for special education pursuant to the provisions of Public Law 94-142; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of Education, the chairman of the Senate Labor and Human Services Committee, the chairman of the House Education and Labor Committee, and each member of the North Dakota Congressional Delegation.

Filed April 1, 1991



## CHAPTER 784

HOUSE CONCURRENT RESOLUTION NO. 3034  
(Representatives Oban, Rydell, Gilmore)  
(Senators Lindgren, Mathern, Mushik)

### **LIBRARY FOR BLIND AND DISABLED URGED**

A concurrent resolution urging continued funding for library resources and services dedicated to the needs of blind and physically handicapped persons.

WHEREAS, the Library of Congress, through the National Library Service for the Blind and Physically Handicapped, administers a free national library program for visually and physically handicapped persons who cannot use standard print materials; and

WHEREAS, the North Dakota State Library contracts with the South Dakota Library for the Blind and Physically Handicapped, using federal funds provided by the United States Department of Education, pursuant to the Library Services and Construction Act; and

WHEREAS, the services rendered by the Library for the Blind and Physically Handicapped, particularly books on recorded discs, on cassettes, and in braille, are both important and essential to persons who cannot use standard print material; and

WHEREAS, most counties in North Dakota have residents in need of such materials; and

WHEREAS, the population of North Dakota is an aging one, all counties in North Dakota can expect to have residents who, because of failing eyesight or other physical impairments, will require these special services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That if Congress reduces or limits funding for the Library Services and Construction Act, and if as a result, funding for recorded and brailled material is reduced, the state of North Dakota should take whatever measures possible to ensure a continuation of these special programs.

Filed April 1, 1991

## CHAPTER 785

HOUSE CONCURRENT RESOLUTION NO. 3037  
(Representatives Freier, Meyer, Kerzman)  
(Senators Naaden, Krauter)

### MISSOURI RIVER BRIDGE URGED

A concurrent resolution urging Congress to provide funds to the appropriate agency to construct a bridge over the Missouri River approximately midway between Bismarck, North Dakota, and Mobridge, South Dakota, in the vicinity of Fort Yates and Emmons County, North Dakota.

WHEREAS, the Legislative Assembly in 1929 appropriated \$130,000 for a study regarding construction of a bridge in the Fort Yates area; and

WHEREAS, the Fortieth Legislative Assembly in 1967 adopted Senate Concurrent Resolution Z urging Congress to give favorable consideration to the construction of such a bridge; and

WHEREAS, the Forty-first Legislative Assembly in 1969 adopted House Concurrent Resolution No. 45 urging Congress to give favorable consideration to United States Senate Bill 229, which would authorize the construction of the bridge; and

WHEREAS, Congress adopted Senate Bill 229, which authorized construction of the bridge as part of the 1970 Flood Control Act; and

WHEREAS, \$470,000 has been expended on site studies, bridge design, and other preparatory work as of June 1972; and

WHEREAS, Congress, in 1990, authorized an additional expenditure of \$250,000 to be used for study and design purposes; and

WHEREAS, no funds have been appropriated for construction of the bridge, and the bridge project is in danger of being deauthorized by law if further funds are not expended on the project; and

WHEREAS, the vast area of North Dakota and South Dakota lying between the Missouri River crossings at Bismarck, North Dakota, and Mobridge, South Dakota, a distance of over 100 miles, has been bisected by the Missouri River and Lake Oahe, requiring residents of, and travelers through, the area to travel great distances to establish river crossings; and

WHEREAS, a modern bridge crossing over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota, would be of great benefit to those engaged in agricultural activities in the area and would provide increased potential for industrial development, tourism, and recreational use of areas endowed with great natural beauty which will otherwise lie dormant; and

WHEREAS, the construction of a bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota, would further provide social, medical, and academic opportunities for the residents of south central North Dakota and north central South Dakota; and

WHEREAS, the state of North Dakota is prepared to put forth full effort into assisting with the construction of a bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota; and

WHEREAS, there are engineers, contractors, suppliers, and administrators native to and located within this state who should receive priority consideration in the planning and construction of the new bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges Congress to provide funds to the appropriate agency to construct a bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly urges the director of the State Department of Transportation to take whatever action is necessary to expedite the process leading ultimately to a new bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers is urged to specify the use of North Dakota engineers, contractors, suppliers, and administrators for the planning and construction of the bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Interior, the United States Army Corps of Engineers, the majority leaders in the United States Senate and House of Representatives, each member of the North Dakota Congressional Delegation, and the director of the State Department of Transportation.

Filed March 26, 1991

## CHAPTER 786

HOUSE CONCURRENT RESOLUTION NO. 3038  
(Representatives Martin, Urlacher, Wald)  
(Senators David, Krauter)

### COAL MINING EXEMPTION URGED

A concurrent resolution urging the Office of Surface Mining, Reclamation and Enforcement of the United States Department of the Interior and the North Dakota Public Service Commission to exempt surface coal mining permits of five acres or less in size from the requirements of the Surface Mining Control and Reclamation Act of 1977 and the North Dakota surface mining and reclamation operations laws.

WHEREAS, North Dakota has plentiful supplies of coal that should be utilized to the greatest extent possible in order to protect the United States from overdependence on foreign sources of energy such as imported oil; and

WHEREAS, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87] and its state counterpart, North Dakota Century Code Chapter 38-14.1, have acted to drive small mine operators out of business because of the exorbitant cost of complying with the environmental, legal, and financial requirements of these laws; and

WHEREAS, several small surface mine operators in North Dakota have had a long history of responsible operation and are unnecessarily and unreasonably constrained from exercising their knowledge and ability to safely and economically mine coal by the Surface Mining Control and Reclamation Act of 1977 and North Dakota Century Code Chapter 38-14.1; and

WHEREAS, these small operators supply the domestic coal needs for many middle and low income families near their mines;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, and the North Dakota Public Service Commission to exempt surface coal mining permits of five acres or less in size from the requirements of the Surface Mining Control and Reclamation Act of 1977 and the North Dakota surface mining and reclamation operations laws; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the director of the Office of Surface Mining, Reclamation and Enforcement of the United States Department of the Interior, each member of the North Dakota Public Service Commission, and each member of the North Dakota Congressional Delegation.

Filed April 9, 1991

## CHAPTER 787

HOUSE CONCURRENT RESOLUTION NO. 3039  
(Skjerven, Meyer, Gorder)

### SPECIAL EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study all aspects of special education.

WHEREAS, public law 94-142 requires that all children with disabilities have available to them a free appropriate education; and

WHEREAS, a student with disabilities is often best served by being provided with an appropriate education in the least restrictive environment possible; and

WHEREAS, educating a student with disabilities in the least restrictive environment possible often presents special challenges such as providing for the student's medical needs during the school day; and

WHEREAS, educating a student with disabilities in the least restrictive environment possible and meeting all of the special challenges, while ensuring that the student receives the maximum benefits from an educational experience, requires the coordination of efforts by governmental and private entities; and

WHEREAS, the cost of special education has risen dramatically in recent years; and

WHEREAS, although mandated by federal law, the financial burden of providing special education services falls primarily on the state and local school districts; and

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they adequately address the purposes for which they were intended; and

WHEREAS, the area of special education has not been studied in depth by a legislative committee for a number of years;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the entire area of special education, including current legal requirements for the provision of special education services, the delivery of medical services to students with disabilities in a school environment, alternatives for the provision of various services, cost factors, and directions for the future, and review the scope and content of existing interagency cooperative agreements for individuals with disabilities to determine whether there is a need to expand participation in the agreements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 788

HOUSE CONCURRENT RESOLUTION NO. 3040  
(Representatives Wilkie, Kaldor, Boucher)  
(Senators Satrom, Krebsbach, Jerome)

### TELECOMMUNICATIONS MEETING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of having governmental entities conduct meetings through the use of telecommunications systems.

WHEREAS, it is a legislative responsibility to ensure the best possible use of the state's financial resources; and

WHEREAS, telecommunications equipment, including interactive video equipment, is available at all of the state's institutions of higher education; and

WHEREAS, given the considerations of time and costs in a state as vast as North Dakota, it would be more efficient to have governmental entities conduct meetings using available telecommunications systems; and

WHEREAS, an informed electorate is essential for responsible government; and

WHEREAS, properly structured telecommunications usage could bring state government closer to the citizens of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of having governmental entities conduct meetings through the use of available telecommunications systems and that the Legislative Council experiment with the use of such systems during the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 789

HOUSE CONCURRENT RESOLUTION NO. 3041  
(Representatives Clayburgh, Kelsch, St. Aubyn)  
(Senators Stenehjem, Marks, Robinson)

### STATE AGENCY RECYCLING STUDY

A concurrent resolution directing the Legislative Council to study recycling and the use of recycled materials by state agencies and institutions.

WHEREAS, state agencies and institutions should be leaders by setting proper examples in preservation of energy and raw materials by avoiding waste; and

WHEREAS, although use of recycled materials by state agencies and institutions should be a priority concern, not all uses of state agencies and institutions are compatible with the use of recycled materials; and

WHEREAS, detailed study is necessary to determine which state agency and institution usages should be required to involve use of recycled materials and which usages might be best exempted from those requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study use of recycled materials by state agencies and institutions, with emphasis on determining areas in which use of recycled materials could be required by law; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 790

HOUSE CONCURRENT RESOLUTION NO. 3042  
(A. Olson, Oban, Tollefson, Urlacher)

### **SOLID WASTE MANAGEMENT STUDY**

A concurrent resolution directing the Legislative Council to study the problems associated with waste management, including the operation and effect of legislation relating to waste management, whether the Department of Health and Consolidated Laboratories is the appropriate state agency for waste management responsibilities, and the effect of establishing district and state waste management plans, and to request, accept, and expend funds to conduct the study.

WHEREAS, the problems associated with waste management are imposing substantial burdens on the state and local governments and are of great concern to residents of this state; and

WHEREAS, during the 1989-90 interim the Legislative Council's Political Subdivisions Committee was directed to study the problems associated with solid waste management; and

WHEREAS, the committee worked closely with representatives of the Department of Health and Consolidated Laboratories and recommended to the Legislative Council six bills relating to solid waste management which were introduced in the Fifty-second Legislative Assembly; and

WHEREAS, the Legislative Assembly and the Department of Health and Consolidated Laboratories are interested in monitoring the problems associated with waste management and the progress in addressing those problems; and

WHEREAS, because district management of waste is a new concept and because of the burdens imposed on local governments, the Legislative Assembly is further interested in monitoring the concerns of local governments with respect to waste management; and

WHEREAS, because of the complexity of the issue and because the United States Environmental Protection Agency has not finalized its proposed landfill regulations, the issue should be studied further; and

WHEREAS, federal and other funds may be available to assist states in conducting studies of this kind and to assess and designate appropriate agencies to site and regulate waste management;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems and benefits associated with waste management, including the operation and effect of legislation relating to waste management, whether the Department of Health and



Consolidated Laboratories is the appropriate state agency for waste management, and the effect of establishing district and state waste management plans; and

BE IT FURTHER RESOLVED, that the Legislative Council may request and accept federal and other funds and may expend those funds as provided in North Dakota Century Code Section 54-35-06 in carrying out its responsibilities under this resolution; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 791

HOUSE CONCURRENT RESOLUTION NO. 3043  
(Miller, Laughlin)

### **TAX-EXEMPT ENTITY PROPERTY ACQUISITION STUDY**

A concurrent resolution directing the Legislative Council to study the methods and manner in which tax-exempt entities acquire and hold real property, the effect of such acquisition and ownership on local tax bases, and the feasibility and desirability of limiting such acquisition, eliminating or limiting such tax exemptions, or requiring divestiture of such property and to study funding sources for the wetland tax exemption program.

WHEREAS, tax-exempt entities acquire substantial acreage of property in North Dakota each year and hold substantial acreage in the state on a tax-exempt basis; and

WHEREAS, removal of property from property tax rolls is a cause of growing concern to officials of political subdivisions, whose tax bases are substantially eroded by acquisition of property by tax-exempt entities, which shifts a larger tax burden to nonexempt taxpayers; and

WHEREAS, thorough review of property tax exemptions under existing law should be conducted to determine whether the purpose for the exemptions as created still exists and whether it is feasible and desirable to limit acquisition of property by tax-exempt organizations, eliminate or limit tax-exempt status of certain entities, or require divestiture of property by tax-exempt entities; and

WHEREAS, wetlands are a valuable natural resource with value for flood control, ground water recharge, water purification, and wildlife; and

WHEREAS, the protection, development, and management of North Dakota's water resources is essential for the long-term health, safety, general welfare, and economic security of North Dakota and its citizens; and

WHEREAS, the Legislative Assembly has passed a wetland tax exemption program that has not been effective because funding has not been made available;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the ownership and acquisition of property by tax-exempt entities and the feasibility and desirability of limiting acquisition and holding of property by tax-exempt entities, eliminating or limiting certain property tax exemptions, or requiring divestiture of property by tax-exempt entities; and

BE IT FURTHER RESOLVED, that the Legislative Council study fair and equitable funding sources for the wetland tax exemption program and seek the advice of the Governor, State Game and Fish Commissioner, Commissioner of Agriculture, State Engineer, and public and private groups in conducting this portion of the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 792

HOUSE CONCURRENT RESOLUTION NO. 3045  
(D. Olsen, A. Olson)

### WATER QUALITY STUDY

A concurrent resolution directing the Legislative Council to study water quality, with emphasis on the testing for nitrates in ground water.

WHEREAS, a safe and adequate supply of water is essential to maintain the quality of life upon which we all depend; and

WHEREAS, many areas within this state do not have adequate supplies of quality water for multipurpose uses; and

WHEREAS, the drought of recent years and the increased use of irrigation have placed in jeopardy the limited aquifers that the people of this state depend on for their water supply; and

WHEREAS, there is concern that current agricultural practices of using chemical fertilizers and pesticides endangers the water supply in many areas of this state; and

WHEREAS, nitrates are one of the most widely used chemicals in agriculture and therefore pose a potential for contamination of ground water if not used properly; and

WHEREAS, coordination is needed concerning the testing and sharing of information on the tests for nitrates conducted by the State Water Commission and the State Department of Health and Consolidated Laboratories;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council, with the assistance of the State Water Commission and State Department of Health and Consolidated Laboratories, study water quality in this state and determine the best methods of preserving and improving on the quality of water supplies; and

BE IT FURTHER RESOLVED, that the Legislative Council study the best method of nitrate testing to safeguard underground aquifers and methods to coordinate testing for nitrates by the State Water Commission and the State Department of Health and Consolidated Laboratories; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 19, 1991

## CHAPTER 793

### HOUSE CONCURRENT RESOLUTION NO. 3046 (Kretschmar)

## JUDICIAL SYSTEM UNIFICATION STUDY

A concurrent resolution directing the Legislative Council to study the problems associated with unification of the state's judicial system into a one-level trial system.

WHEREAS, several bills have been introduced in the Fifty-second Legislative Assembly to provide for a one-level trial court within the state's judicial system; and

WHEREAS, some of the bills provide for a delayed time of taking effect, which would allow opportunity for a study of the potential effects of changes; and

WHEREAS, it is incumbent upon the Legislative Assembly and those involved with administration of the judicial system to assure that adequate study and planning is completed before structural changes become effective to assure that any changes made will benefit the citizens of the state and the interests of justice;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems associated with unification of the state's judicial system into a one-level trial system; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 20, 1991

## CHAPTER 794

HOUSE CONCURRENT RESOLUTION NO. 3047  
(Wardner, Martin)

### **POLITICAL SUBDIVISION LEVY STUDY**

A concurrent resolution directing the Legislative Council to study levy limitations for political subdivisions.

WHEREAS, political subdivisions are primarily dependent on real property taxes to support local governmental services; and

WHEREAS, the Legislative Assembly has restricted taxing powers and revenue-raising authority of political subdivisions through alternatives of mill levy limitations or limitations on dollar increases in levies; and

WHEREAS, the alternative that allows political subdivisions to raise revenue through dollar increases was intended to be a temporary provision but has been enacted by each legislative assembly since 1981; and

WHEREAS, detailed study of property taxation and political subdivision levy limitations is required as a basis for the Legislative Assembly to properly determine equitable revenue needs of political subdivisions and taxpayer protection needed in the form of levy limitations;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study levy limitations imposed upon political subdivisions, with emphasis on determining whether permanent provisions can be enacted to provide proper levels of levy and budget limitations for political subdivisions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 795

HOUSE CONCURRENT RESOLUTION NO. 3049  
(Henegar, Martin)

### CAPTIVE AND EXOTIC WILDLIFE STUDY

A concurrent resolution directing the Legislative Council to study the statutes and rules concerning the propagation of captive wildlife and exotic wildlife in North Dakota and the authority of the Game and Fish Commissioner and the Board of Animal Health to regulate this industry.

WHEREAS, a healthy and robust domestic livestock industry is essential to the economic well-being of North Dakota; and

WHEREAS, the propagation of captive wildlife and exotic wildlife is becoming an important industry in this state; and

WHEREAS, fish and wildlife related recreation is a \$1.2 billion industry in North Dakota; and

WHEREAS, the Board of Animal Health has responsibility for protecting the state's domestic livestock industry; and

WHEREAS, the Game and Fish Commissioner has responsibility for protecting the state's wildlife resources; and

WHEREAS, captive wildlife, as well as native wildlife and domestic livestock, are subject to carrying the same diseases, and whether in confinement or roaming free, can pass disease on to other livestock, wildlife, and in some instances, such as tuberculosis and brucellosis, to humans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the laws and rules concerning the propagation of captive wildlife and exotic wildlife in North Dakota and the authority of the Game and Fish Commissioner and the Board of Animal Health to regulate this industry; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 796

HOUSE CONCURRENT RESOLUTION NO. 3050  
(Representatives Delzer, Gilmore, St. Aubyn)  
(Senators Freborg, Mathern, Wogsland)

### **OCCUPATIONAL LICENSING STUDY**

A concurrent resolution directing the Legislative Council to study laws governing licensing and regulation of various occupations and professions.

WHEREAS, licensing and regulation of many occupations and professions is governed by various boards or similar bodies established by law and these governing boards have been granted broad authority to regulate the respective occupations or professions; and

WHEREAS, because occupational and professional governing boards operate under statutes established by the Legislative Assembly, it is incumbent upon the Legislative Assembly to assure that proper levels of authority have been delegated to such governing boards and retained by the state; and

WHEREAS, questions exist regarding proper levels of delegation and charges and fees imposed by occupational and professional governing boards and whether such charges and fees should be required to be approved by the Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the authority and practices of occupational and professional boards established by or pursuant to state law with emphasis on the proper level of legislative or other state supervision and delegation of authority to these boards and the charges and fees assessed by these boards; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991



## CHAPTER 797

### HOUSE CONCURRENT RESOLUTION NO. 3052 (Clayburgh)

## EXCAVATION NOTICE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a one-call excavation notice system.

WHEREAS, the establishment of a one-call excavation notice system would make it possible for persons who are going to excavate to locate all underground facilities by making a single phone call; and

WHEREAS, implementation of a one-call excavation notice system may result in less damage to underground facilities caused by excavations or construction activities; and

WHEREAS, a study of the feasibility and desirability of establishing a one-call excavation notice system should be undertaken by the Legislative Council because of the length of time that is needed to determine whether a one-call excavation notice system should be implemented in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of implementing a one-call excavation notice system; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance and cooperation of the Public Service Commission, the North Dakota League of Cities, the North Dakota Association of Counties, and the North Dakota Township Officers Association in conducting the study of whether a one-call excavation notice system should be implemented; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 798

HOUSE CONCURRENT RESOLUTION NO. 3054  
(Representatives Oban, Kelsch, Gilmore)  
(Senators Heinrich, Holmberg)

### EARLY CHILDHOOD TRACKING SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the current and future role of the North Dakota early childhood tracking system.

WHEREAS, the North Dakota early childhood tracking system is a joint effort of the Department of Health and Consolidated Laboratories, Department of Human Services, and the Department of Public Instruction; and

WHEREAS, the North Dakota early childhood tracking system is a comprehensive early intervention program designed to monitor children up to age 5 who may be at risk for developmental delays; and

WHEREAS, by monitoring a young child's development, potential developmental delays can be detected and appropriate services can be offered at such times and in such ways that future difficulties for a child can be minimized or prevented; and

WHEREAS, the North Dakota early childhood tracking system began as a pilot project in Grand Forks in 1987, and as a result of its initial success, has expanded throughout the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the North Dakota early childhood tracking system's current and future roles, not only in tracking children at risk for developmental delays and providing essential assistance to such children and their families, but also in helping the state minimize long-term education and care costs for certain children through tracking and early intervention efforts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

**CHAPTER 799****HOUSE CONCURRENT RESOLUTION NO. 3055  
(Skjerven)****STUDENTS IN BORDERING STATES STUDY**

A concurrent resolution directing the Legislative Council to study the enrollment of North Dakota students in public schools or institutions of bordering states.

WHEREAS, certain North Dakota students attend public schools or institutions in bordering states for reasons of proximity or otherwise; and

WHEREAS, various interstate agreements have been entered into for the education of students in public schools or institutions of bordering states; and

WHEREAS, uncertainties often exist regarding issues such as transportation responsibilities for students who attend public schools or institutions in bordering states;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the extent of and need for interstate education of public school students as it pertains to North Dakota and agreements entered into by North Dakota school districts bordering other states for the interstate education of public school students; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 800

HOUSE CONCURRENT RESOLUTION NO. 3056  
(Tollefson, Hanson)

### **GRATIS HUNTING PERMIT STUDY**

A concurrent resolution directing the Legislative Council to study the equity and advisability of the present method of issuance of gratis hunting permits.

WHEREAS, state law provides for issuance of hunting permits on a gratis basis in certain instances; and

WHEREAS, in some areas of the state, the number of gratis hunting permits may equal or exceed the number of permits for which fees have been paid; and

WHEREAS, thorough study should be conducted to determine the equity and advisability of providing gratis hunting permits in terms of the effect on each species of game for which gratis permits are available, relative hunting opportunities of landowner and nonlandowner hunters, and the equity of the manner in which numbers of permits and granting of permits is determined;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the advisability and equity of distribution of gratis hunting permits; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 27, 1991

## CHAPTER 801

### HOUSE CONCURRENT RESOLUTION NO. 3057 (Kretschmar)

#### UNIFIED BUDGET STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of requiring a unified budget.

WHEREAS, Article X, Section 12, of the Constitution of North Dakota provides that all public moneys may be expended only pursuant to appropriation by the Legislative Assembly; and

WHEREAS, in present practice the Legislative Assembly makes appropriations from the state general fund, from special funds, and by standing and continuing appropriations; and

WHEREAS, a substantial amount of revenue expended by the state does not appear as part of the state general fund budget because of appropriation from special funds or by continuing appropriation; and

WHEREAS, investigation should be made of the feasibility and desirability of providing a unified budget under which all appropriated amounts would appear; and

WHEREAS, the feasibility and desirability of continuing to use special funds for limited purposes, moving expenditures "off budget" for various purposes, and use of other means of expenditure that do not appear as state general fund appropriations should be examined to determine whether these kinds of expenditures give a false impression of the actual level of expenditures by the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the policy of appropriating funds from other than general fund sources and the feasibility and desirability of requiring a unified budget; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 19, 1991

## CHAPTER 802

HOUSE CONCURRENT RESOLUTION NO. 3058  
(Representatives Oban, Myrdal, Gates)  
(Senators Freborg, Wogsland)

### FLEXIBLE CURRICULA STUDY

A concurrent resolution directing the Legislative Council to study the use of flexible curricula in North Dakota high schools and the team approach to course selections.

WHEREAS, each high school student has individual talents, goals, and aspirations that must be identified and nurtured in school as well as at home; and

WHEREAS, although high standards must be set for all high school students, the same standards are not appropriate for each student; and

WHEREAS, flexibility within the educational system enhances creativity and learning; and

WHEREAS, it is in the best interest of each high school student to have a flexible curriculum and flexibility in specific graduation requirements; and

WHEREAS, it is in the best interest of each high school student to have individualized curricula and instruction; and

WHEREAS, the talents, goals, aspirations, choice of colleges, and career choices of each high school student must be taken into account when high school courses are selected; and

WHEREAS, it is in the best interest of each high school student that the development of an education plan through the cooperative effort of the student, the student's parents, teachers and school administration be encouraged; and

WHEREAS, as more and more high schools are moving toward parent-teacher conferences, increased participation in the cooperative or team development of an education plan for each student must be encouraged; and

WHEREAS, taking into account talents, goals, and aspirations, each high school student must be provided with an appropriate education in order that that student can successfully live and work in the 21st Century;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the use of flexible curricula in North Dakota high schools and the team approach to assisting a student make course selections appropriate to the student's talents and goals; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 803

HOUSE CONCURRENT RESOLUTION NO. 3059  
(Representatives G. Berg, Nicholas, Stofferahn)  
(Senators Langley, Vosper, Wogsland)

### FISH INTRODUCTION AND TRANSFER STUDY

A concurrent resolution directing the Legislative Council to study the introduction of nonnative fish species into this state and the interbasin transfer of water, fish species, and aquatic plant species between or among drainage basins located in this state.

WHEREAS, the issue of the introduction of nonnative fish species into this state and the interbasin transfer of water, fish species, and aquatic plant species between or among drainage basins in this state has affected development and construction of the Garrison Diversion Unit Project; and

WHEREAS, a Legislative Council study of whether the Game and Fish Commissioner should be prohibited from introducing any nonnative fish species that may gain access to interstate or Canadian waters, unless each proposed introduction receives the prior approval of the states and the provinces of the Dominion of Canada may lay the groundwork for subsequent agreements among the states and Canadian provinces affected by the Garrison Diversion Unit Project; and

WHEREAS, a Legislative Council study of whether the state and its political subdivisions should be prohibited from transferring any water, fish species, or aquatic plant species between or among any drainage basins in this state without first obtaining the prior approval of certain state and federal officials may help to resolve regional differences concerning water development; and

WHEREAS, although the Garrison Diversion Reformulation Act of 1986 substantially revised the Garrison Diversion Unit Project, it retained the Lonetree Reservoir as an authorized feature of the project; and

WHEREAS, a dam and control gate on the Sheyenne River would provide much-needed water for municipalities located on the Sheyenne and Red rivers; flood control for the Baldhill Dam, Valley City, and Fargo, as well as other cities located on the Sheyenne and Red rivers; water for fish in Devils Lake, the Sheyenne River, and the Red River; and over one thousand miles of stable or flowing water in dry years for migratory waterfowl in the James, Sheyenne, and Red River basins; and

WHEREAS, any water development project in this state must ensure that the provisions of the Boundary Waters Treaty of 1909 are fully and completely complied with; and

WHEREAS, any water development project that would deliver water to Devils Lake must necessarily include an assessment of the riparian rights of landowners adjacent to Devils Lake;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the introduction of nonnative fish species into this state and the interbasin transfer of water, fish species, and aquatic plant species between or among drainage basins located in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991



**CHAPTER 804**

HOUSE CONCURRENT RESOLUTION NO. 3060  
(Representatives Rennerfeldt, Byerly, B. Anderson)  
(Senators David, Graba)

**STATE ENERGY POLICY STUDY**

A concurrent resolution directing the Legislative Council to study the need for a long-term energy policy for North Dakota.

WHEREAS, the extraction or use of energy resources of oil, gas, coal, and water located within North Dakota depletes or reduces the resource base available to future generations; and

WHEREAS, the extraction, production, consumption, and use of these resources is interdependent with the availability and uses of the same or similar resources in other states and foreign countries; and

WHEREAS, it may be beneficial to formulate and adopt a long-term energy policy with respect to energy resources of the state, similar to the Vision 2000 study that related primarily to nonextractive industries;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the energy resources of North Dakota available for use or development, the taxes imposed on energy resources, and the policies now in place in our state or which should be considered as a part of an overall long-term energy policy for North Dakota. In conducting this study, the Legislative Council may obtain consulting services and obtain citizen committee findings and recommendations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 805

HOUSE CONCURRENT RESOLUTION NO. 3061  
(Representatives Oban, Rydell, Scherber)  
(Senators Heinrich, Thane, Stenehjem)

### STATE EMPLOYEES' COMPENSATION STUDY

A concurrent resolution directing a Legislative Council study of the entire range of issues arising from the current methods and philosophy governing state employees' compensation.

WHEREAS, the classification system operating under the jurisdiction of the Central Personnel Board has been continuously underfunded; and

WHEREAS, there is no comprehensive pay administration plan that addresses longevity, continuing education, meritorious service, or rational career advancement; and

WHEREAS, the lack of a comprehensive pay administration policy contributes substantially to employee turnover and low employee morale; and

WHEREAS, this lack of a comprehensive pay administration plan has gone on for many years and cannot be effectively addressed without clear legislative understanding of the issues;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study pay administration within the state classified service, specifically addressing the issues of recognition of meritorious service, recognition of short-term extraordinary effort, recognition of longevity, methodology of allowing career advancement within a particular profession or skill area, and such other significant issues as may be brought out during the course of the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 27, 1991

## CHAPTER 806

HOUSE CONCURRENT RESOLUTION NO. 3062  
(Representatives Rennerfeldt, R. Berg)  
(Senators Nelson, Meyer)

### HAZARDOUS MATERIAL DISPOSAL STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of establishing a collection and disposal program for agricultural pesticides, hazardous household chemicals, and their containers.

WHEREAS, there is substantial use in this state of agricultural pesticides and hazardous household chemicals; and

WHEREAS, unused agricultural pesticides, hazardous household chemicals, and their containers can, if not properly collected and disposed of, pose serious environmental threats; and

WHEREAS, it is in the interest of all North Dakotans that unused agricultural pesticides, hazardous household chemicals, and their containers, be appropriately collected and disposed of;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility of establishing a collection and disposal program for agricultural pesticides, hazardous household chemicals, and their containers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 807

HOUSE CONCURRENT RESOLUTION NO. 3063  
(Brokaw, B. Anderson, Nicholas, Byerly, Jacobson)  
(Approved by the Committee on Delayed Bills)

### **CREDIT UNION AGRICULTURAL LENDING POLICIES**

A concurrent resolution urging the National Credit Union Administration to refrain from regulations on agricultural lending which would reduce the ability of North Dakota credit unions to provide agricultural loans to their members.

WHEREAS, credit unions in North Dakota provide loans for agricultural purposes to their members; and

WHEREAS, the National Credit Union Administration is proposing additional limitations on credit unions which would limit their ability to serve their members with agricultural loans; and

WHEREAS, an adequate supply of available financing is important to the well-being of the family farmers in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the National Credit Union Administration refrain from implementing the proposed business loan regulation as published in the Federal Register on January 24, 1991; and

BE IT FURTHER RESOLVED, that the National Credit Union Administration rules for agricultural loans be separate and apart from rules governing other commercial loans; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the National Credit Union Administration Board, 1776 G Street NW, Washington, DC 20456.

Filed March 22, 1991

## CHAPTER 808

HOUSE CONCURRENT RESOLUTION NO. 3065  
(Scherber, Larson)

### HUMAN SERVICES DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study privatization of and contracting for services by the Department of Human Services to provide services that the department is obligated to provide.

WHEREAS, the Department of Human Services is charged with providing services to the chronically mentally ill, the chemically dependent, the developmentally disabled, and the aged and infirm; and

WHEREAS, the Department of Human Services attempts to meet the needs of clients with appropriate and cost-effective services; and

WHEREAS, many for profit and nonprofit community-based organizations offer services that are provided by public agencies; and

WHEREAS, mental health services, chemical dependency treatment, and counseling services are offered by many public and private agencies and associations; and

WHEREAS, the Department of Human Services currently contracts for some of these services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the current level of contracting done by the Department of Human Services and the role of for profit and nonprofit organizations, examine the underlying goals of contracting and direct services, examine the cost effectiveness of contracting, the needs of clients for accessible and appropriate services, analyze the service range and cost to contract for services, and develop a plan for contracting including a framework for requests for proposals, evaluation, renewal, and termination of services and contracts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 809

HOUSE CONCURRENT RESOLUTION NO. 3066  
(Kelsch, Oban, Henegar, Coats)  
(Approved by the Committee on Delayed Bills)

### **PERSIAN GULF RETURNEES WELCOME URGED**

A concurrent resolution urging the Governor and all North Dakotans to join in welcoming home all North Dakota personnel called to active military duty in the Persian Gulf War.

WHEREAS, the Iraqi invasion of Kuwait and the response of the United States and allied multinational forces to the invasion have resulted in one of the largest American military deployments in recent history; and

WHEREAS, many North Dakota citizens have been called to active military duty to combat this unprovoked aggression; and

WHEREAS, the sacrifice and heroism of those called to active military duty in the Persian Gulf War is deserving of the full measure of respect and appreciation of all North Dakotans, which should be conveyed so that those called to active duty have no doubt of the esteem for them in the hearts and minds of North Dakotans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Governor, Adjutant General, and other state leaders to cooperate in organizing and conducting a welcome home celebration on the Capitol grounds upon the return of North Dakota's brave and dedicated men and women called to active duty in the Persian Gulf War and further urges all North Dakotans to join in the celebration and expression of pride and gratitude; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor and the Adjutant General.

Filed March 27, 1991

**CHAPTER 810**

HOUSE CONCURRENT RESOLUTION NO. 3067  
(Schneider, Kloubec)  
(Approved by the Committee on Delayed Bills)

**CHARITABLE GAMING STUDY**

A concurrent resolution directing the Legislative Council to study charitable gaming laws and rules.

WHEREAS, the growth of charitable gaming as an industry in this state requires the attention of the Legislative Assembly in each legislative session; and

WHEREAS, a thorough review of rules and laws governing charitable gaming by an interim committee is required to assure that rules and laws regarding taxes, enforcement, and limitations on charitable gaming are adequate to govern charitable gaming under current conditions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study charitable gaming laws and rules to determine whether the laws and rules regarding taxation, enforcement, and limitations on charitable gaming are adequate and appropriate; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 811

HOUSE CONCURRENT RESOLUTION NO. 3068

(Meyer, Gates)

(Approved by the Committee on Delayed Bills)

### EDUCATIONAL FUNDING FORMULA STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of implementing an educational funding formula based on current costs that considers using all sources of revenue and wealth to measure a school district's local ability to support education, incorporating sparsity of enrollment, requiring a minimum level of local effort, and providing additional funding for categories of students that are below statewide averages of per-pupil expenditures.

WHEREAS, the current education funding formula often creates widely disparate results; and

WHEREAS, the average cost per pupil in the 1989-90 school year ranged from \$13,819 to \$2,094; and

WHEREAS, the taxable valuation per pupil in the 1989-90 school year ranged from \$75,707 to \$160; and

WHEREAS, the dollars raised per pupil based on a state average mill levy during the 1989-90 school year ranged from \$12,632 to \$27; and

WHEREAS, equalization of the funding formula should include consideration of using all sources of revenue and wealth to measure a school district's local ability to support education, incorporating a school district's sparsity of enrollment as a weighting factor, requiring a minimum level of local funding effort, and providing an additional payment for any category of students having a per-pupil expenditure that is less than 90 percent of the statewide average;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the educational funding formula based on current costs that considers using all sources of revenue and wealth to measure a school district's local ability to support education, incorporating sparsity of enrollment, requiring a minimum level of local effort, and providing additional funding for categories of students that are below statewide averages of per-pupil expenditures, and determine whether that or a similar formula would, if implemented, alleviate the inequities resulting from the application of the current funding formula; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 27, 1991



## CHAPTER 812

HOUSE CONCURRENT RESOLUTION NO. 3069  
(Wald, Kaldor, Muhs, Myrdal, Kunke1)  
(Approved by the Committee on Delayed Bills)

### SCHOOL TRANSPORTATION AID STUDY

A concurrent resolution directing the Legislative Council to study state transportation aid to school districts.

WHEREAS, state transportation aid is paid to school districts based primarily on the number of miles traveled and the size of schoolbus operated; and

WHEREAS, state transportation aid has, over the years, steadily increased as a percentage of all transportation costs incurred by school districts; and

WHEREAS, the current state transportation formula evidences a disparity in the percentage of transportation costs reimbursed to school districts;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state transportation aid to determine whether the existing formulas adequately and equitably meet the needs of large and small school districts, and if not, to consider various funding formulas that would better serve the existing and future transportation needs of large and small school districts; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 813

HOUSE CONCURRENT RESOLUTION NO. 3070

(R. Berg)

(Approved by the Committee on Delayed Bills)

### STATE EXPENDITURE AND SICK LEAVE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of allowing state agencies to retain and expend a portion of unexpended general fund appropriations beyond the end of the biennium for which the funds were appropriated and the possibility of a bonus system in lieu of sick leave use.

WHEREAS, state law presently provides that unexpended general fund appropriations must be turned back to the state general fund after the end of the biennium for which the funds were appropriated; and

WHEREAS, legislation has been considered by the Fifty-second Legislative Assembly that would allow state agencies, institutions, or departments to retain expenditure authority over a portion of unexpended general fund appropriations beyond the end of the biennium for one-time purchases or projects that do not result in a continuing obligation; and

WHEREAS, use of state employee sick leave can put stress on understaffed and overworked state agencies; and

WHEREAS, incentives in lieu of the use of sick leave has in some states reduced the use of sick leave; and

WHEREAS, careful study is required of the feasibility and desirability of allowing state agencies to retain expenditure authority over general fund appropriations after the end of the biennium for which the funds were appropriated;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of allowing state agencies to retain expenditure authority over a portion of general fund appropriations beyond the end of the biennium for which the funds were appropriated and the possibility of a bonus system in lieu of sick leave use; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 8, 1991

## CHAPTER 814

HOUSE CONCURRENT RESOLUTION NO. 3071  
(Representatives Wald, Whalen)  
(Senator Tallackson)  
(Approved by the Committee on Delayed Bills)

### STATE INSURANCE TAXATION URGED

A concurrent resolution urging Congress to continue its declared policy that the continued regulation and taxation by the several states of the business of insurance is in the public interest.

WHEREAS, the safety and soundness of insurance companies operating in the United States is a prime objective of state insurance regulation; and

WHEREAS, the public depends on solvent insurance companies to provide retirement income, income protection in case of death or disability, protection from catastrophic loss, and safe investment opportunities; and

WHEREAS, states are endeavoring to improve insurance company solvency regulation in order to protect state treasuries, fiscally sound companies, state guaranty fund systems, and guaranteed investment contracts; and

WHEREAS, the National Association of Insurance Commissioners has developed an agenda to enhance a state's authority to monitor and regulate insurance company solvency through:

1. Financial regulatory standards and state accreditation;
2. Uniform reinsurance evaluation;
3. Examination processes assessment;
4. Further enhancement of the National Association of Insurance Commissioners' solvency analysis support to state insurance departments; and
5. Review of annual statement disclosure of capitalization and reserving requirements; and

WHEREAS, states are acting to provide an alternative to federal intervention in insurance company solvency regulation and federal preemption of the states' insurance premium tax base;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Congress of the United States to continue its declared policy, as expressed in the McCarran-Ferguson Act, that "the continued regulation and taxation by the several States of the business of insurance is in the public interest"; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to each member of the North Dakota Congressional Delegation.

Filed April 4, 1991

## CHAPTER 815

HOUSE CONCURRENT RESOLUTION NO. 3072  
(Representatives Ring, DeMers, Oban)  
(Senators Evanson, Heinrich, Mushik)  
(Approved by the Committee on Delayed Bills)

### MILLER SCHOOL STUDENTS RECOGNITION

A concurrent resolution congratulating the sixth grade students of Vivian Meiers at Miller Elementary School in Bismarck for earning national recognition for taking an interest in our environment and becoming involved in the legislative process.

WHEREAS, the sixth grade students of teacher Vivian Meiers at Miller Elementary School in Bismarck undertook a study on environmental protection which ultimately led to drafting, securing sponsorship for, and testifying in support of 1991 House Concurrent Resolution No. 3027, which calls for a Legislative Council study of methods to reduce ground pollution in North Dakota landfills with an emphasis on encouraging recycling efforts; and

WHEREAS, the environmental study done by these students was entered in a contest sponsored by the Target Corporation and was selected as the nation's winning entry, for which three students and their teacher will attend "Earth Expo '91" at the United Nations in New York City; and

WHEREAS, the national attention received by these students for their project and the example set by these students of the appropriate manner in which to conduct successful citizen involvement in the legislative process are examples of which North Dakotans can be proud;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-second Legislative Assembly extends its congratulations and appreciation to the sixth grade students of Vivian Meiers at Miller Elementary School in Bismarck for achieving national attention for the state of North Dakota and for the excellent example set by these students in how citizens can make a difference; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Vivian Meiers and the two classes involved in this project at Miller Elementary School, the Bismarck Superintendent of Schools, and the Bismarck School Board.

Filed April 10, 1991

# SENATE CONCURRENT RESOLUTIONS

## CHAPTER 816

SENATE CONCURRENT RESOLUTION NO. 4001  
(Legislative Council)  
(Interim Elections Committee)

### ELECTION CAMPAIGN STUDY

A concurrent resolution directing the Legislative Council to study North Dakota election laws, including the laws relating to the financing of election campaigns and the reporting of election campaign expenditures.

WHEREAS, during the 1989-90 interim the Legislative Council's Elections Committee was directed to consider all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective; and

WHEREAS, the committee focused its study on the feasibility of mail ballot elections and adopted guidelines for use of mail ballots at the 1990 primary election; and

WHEREAS, during the latter part of the interim the committee received testimony indicating that there may be conflicting provisions and inconsistencies in North Dakota election laws and indicating that the laws relating to the financing of election campaigns and the reporting of election campaign contributions and expenditures may be inadequate;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study North Dakota election laws, including the laws relating to the financing of election campaigns and the reporting of election campaign expenditures, with an emphasis on resolving inconsistencies and conflicting provisions, on establishing more uniform and effective election procedures, and on establishing more adequate provisions relating to the financing of election campaigns and the reporting of election campaign contributions and expenditures; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 1, 1991

## CHAPTER 817

SENATE CONCURRENT RESOLUTION NO. 4002  
(Legislative Council)  
(Interim Industry and Business Committee)

### SUBSIDIZED HEALTH INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and ramifications of adopting and implementing a state-subsidized health insurance program for uninsured and underinsured residents.

WHEREAS, during the 1989-90 interim, the Legislative Council's interim Industry and Business Committee studied the health care insurance needs of uninsured and underinsured persons; and

WHEREAS, among the several methods considered by the committee to address the needs of the uninsured and underinsured was a proposal to allow the Department of Human Services to contract with private health insurance providers to provide a subsidized nongroup health insurance coverage, available on a sliding fee scale basis, to persons with incomes up to 250 percent of the federal poverty level; and

WHEREAS, several issues relating to the proposal were unresolved and are worthy of further study, including whether Medicare recipients should be included in the population eligible for the subsidized coverage, whether the targeted poverty level should be lowered, and whether the coverages contemplated by the proposal should be modified; and

WHEREAS, committee members concluded that, in an effort to further consider methods of addressing the needs of the uninsured and the underinsured, issues related to the proposal, the scope of its potential implementation, and its general feasibility should be studied further;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and ramifications of adopting and implementing a state-subsidized health insurance program for uninsured and underinsured residents, with emphasis upon a review and further development of information regarding the proposal considered by the interim Industry and Business Committee; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 15, 1991

## CHAPTER 818

SENATE CONCURRENT RESOLUTION NO. 4003  
(Legislative Council)  
(Interim Jobs Development Commission)

### STATE GOVERNMENT PRIVATIZATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of the privatization of some state government services.

WHEREAS, the North Dakota 2000 Committee as part of its call for state government reform has recommended that some state government functions should be examined for possible privatization on the basis, in part, that North Dakota is perceived as having a high number of state employees as compared on a per capita basis with other states; and

WHEREAS, the general premise underlying privatization is that, because private firms are subject to competition from other firms, they are compelled to provide goods and services for less cost and more efficiently than government agencies; and

WHEREAS, although North Dakota has contracted for the provision of public sector services through the private sector, including services for the developmentally disabled, several other states have privatized other public sector services which illustrate potential opportunities for further privatization in North Dakota, particularly if privatization would provide a clear benefit for the state and the function to be privatized lies clearly outside of the function of government; and

WHEREAS, privatization of state government services is beset by a host of constitutional, statutory, and contractual issues that, to a large degree, are closely allied to an evaluation of policy questions relating to cost effectiveness, quality of services, state control or guidelines, and state contractual remedies;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of the privatization of some state government services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991



## CHAPTER 819

SENATE CONCURRENT RESOLUTION NO. 4004  
(Legislative Council)  
(Interim Jobs Development Commission)

### ECONOMIC DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study, analyze, and evaluate, with assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development.

WHEREAS, after thousands of hours of research, interviews, and meetings, the North Dakota 2000 Committee concluded that North Dakota's economic indicators show a state at risk; that higher prices for the state's two most basic economic generators - agriculture and energy - would not solve the state's economic problems; and that fundamental long-term changes are needed; and

WHEREAS, the North Dakota 2000 Committee and the Governor's Committee of 34 recommend changes based on a strong four-sector program featuring advanced agriculture and food processing, energy byproduct development, exported services and tourism, and advanced manufacturing; and

WHEREAS, many of the recommendations of the two committees are affected by the state's present tax structure and require an increase in state funding for economic development; and

WHEREAS, the North Dakota 2000 Committee conducted meetings in 40 communities across the state in an effort to determine whether North Dakotans perceived that the North Dakota economy was at risk and, if so, the problems causing the economy to stagnate; and

WHEREAS, although North Dakotans agreed that the state has serious economic problems and with the need for economic development in the state, recent successful referrals of bills providing for increased sales, income, and gasoline taxes, and the defeat of an initiated measure to increase sales taxes for educational purposes sent a clear message that the North Dakota taxpayer is not supportive of present policies of state government as it relates to taxes; and

WHEREAS, over time as laws are enacted to address specific shortrun concerns, the system can become overlapping or even contradictory in its use of policy tools that may be unnecessarily complex and patchworked in a manner that thwarts the accomplishment of originally intended objectives; and

WHEREAS, support for any economic change in North Dakota must come from the people and that will only be accomplished if the state's tax structure is perceived as fair and responsive to the people's needs; and

WHEREAS, although the recommendations of the North Dakota 2000 Committee and the Governor's Committee of 34 for improving the state's economic position would make sweeping changes if implemented, there is a need for additional study to ensure that the state develops a rational overall fiscal policy that considers criteria such as revenue productivity, simplicity, equity, competitiveness, economic neutrality, intergovernmental neutrality, and administrative feasibility;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study, analyze, and evaluate, with the assistance of a consultant, public policy as determined by the Legislative Assembly and its relationship to the state's ability to enhance economic development; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed February 28, 1991

## CHAPTER 820

SENATE CONCURRENT RESOLUTION NO. 4005  
(Legislative Council)  
(Interim Committee on Public Employees Retirement Programs)

### RETIREMENT OFFICE CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement.

WHEREAS, it is in the best interests of the state and its political subdivisions to provide cost efficient and properly administered retirement programs for the benefit of public employees; and

WHEREAS, the adequacy of public employee retirement programs is dependent on the proper administration and investment of public employee retirement funds; and

WHEREAS, the merger of the investment functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement has been successful and resulted in cost savings; and

WHEREAS, the consolidation of areas such as accounting, computerization, benefits counseling, and management staffing has the potential to result in significant further cost savings; and

WHEREAS, the management of the state health plan by the Public Employees Retirement System should be evaluated and the possibility of merging this function of the Public Employees Retirement System into a combined system consisting of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement should be studied; and

WHEREAS, the decision whether to consolidate the functions of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement necessarily involves the funds, and the participants in and beneficiaries of the funds; and

WHEREAS, the long-term common goal of the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement is to maximize benefits to public employees;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of consolidating the Retirement and Investment Office, Public Employees Retirement System, and Teachers' Fund for Retirement; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 821

### SENATE CONCURRENT RESOLUTION NO. 4007 (Bowman)

## PUBLIC ASSISTANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of establishing programs for families and individuals receiving public assistance to permit them to develop skills that will lead to gainful employment.

WHEREAS, the effective delivery of public assistance is an integral part of the well-being of significant numbers of North Dakota families and individuals; and

WHEREAS, it is in the interest of all North Dakotans that public assistance be a short-term rather than a long-term support mechanism; and

WHEREAS, it is in the interest of all North Dakotans that the state take every opportunity to assist recipients of public assistance in becoming gainfully employed; and

WHEREAS, North Dakota has university campuses, vocational campuses, and other state facilities that could be made to accommodate families and individuals; and

WHEREAS, the state could provide to such families and individuals food, shelter, and other basic care; and

WHEREAS, with the removal of concerns regarding basic necessities such as food and shelter, recipients could pursue courses of study that would prepare them for careers of their choosing; and

WHEREAS, with support, encouragement, and newly acquired skills, North Dakota families and individuals currently receiving public assistance could achieve both self-esteem and gainful employment, thereby becoming self-sufficient and no longer in need of public assistance;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of establishing programs on utilizing our university campuses, vocational campuses, and other state facilities for families and individuals receiving public assistance to permit them to develop skills that will lead to gainful employment and study all current skills development programs as well as current and potential funding sources for those programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 822

### SENATE CONCURRENT RESOLUTION NO. 4009 (Committee on Appropriations)

## BLOCK GRANT FUNDS APPROVAL

A concurrent resolution regarding the approval of state agency use of block grant funds, and authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants as passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 on July 29, 1981, thus creating several categories of "block" grant programs; and

WHEREAS, legislatures of the states are required to conduct public hearings; and

WHEREAS, the Appropriations Committees have held the required public hearings on block grant moneys expected for the next biennium by the Office of Management and Budget, Department of Human Services, and State Department of Health and Consolidated Laboratories; and

WHEREAS, the Fifty-second Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by the Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 1992 and thus its public hearing responsibility for grants not approved by the Fifty-second Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the appropriation bills for the Office of Management and Budget, Department of Human Services, and State Department of Health and Consolidated Laboratories, as they are passed by this Legislative Assembly, are the Legislative Assembly's approval and contain directions on the use of block grant moneys for the period ending September 30, 1993; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the Budget Section authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-second Legislative Assembly through September 30, 1993, and the Budget Section shall utilize such methods and procedures for holding such hearings and giving notice thereof as it deems appropriate.

## CHAPTER 823

### SENATE CONCURRENT RESOLUTION NO. 4011 (Streibel, Naaden)

#### STATE ROLE IN GARRISON DIVERSION

A concurrent resolution urging the Garrison Diversion Conservancy District, with the cooperation of the State Water Commission, the Governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation, to attempt to negotiate promptly, with the appropriate federal officials, a greater role for the state in the development, construction, operation, and maintenance of the Garrison Diversion Project.

WHEREAS, the state of North Dakota was first promised a 1,000,000-acre multiple-purpose water project in the historic Pick-Sloan compromise, which led to the Flood Control Act of December 22, 1944, [58 Stat. 887]; and

WHEREAS, the Act of August 5, 1965, [79 Stat. 433] authorized the initial phase of the Garrison Diversion Unit which promised 250,000 acres of irrigation, fish and wildlife, municipal and rural water supplies, recreation, and other benefits for the state of North Dakota; and

WHEREAS, the Garrison Diversion Project was substantially modified by the Garrison Diversion Unit Reformulation Act of 1986 [100 Stat. 418] and project benefits to the state of North Dakota were significantly reduced; and

WHEREAS, federal officials have consistently promised the state of North Dakota that the United States would promptly develop the Garrison Diversion Unit if the state would accept a smaller project and if the state would pay an ever-increasing share of project costs; and

WHEREAS, the state of North Dakota has already contributed 550,000 acres of land for Pick-Sloan reservoirs so that downstream states may receive flood control, hydroelectric, and navigation benefits; and

WHEREAS, the state of North Dakota has already contributed thousands of acres of land for wetland, fish, and wildlife mitigation and enhancement related to the project for the benefit of the entire United States; and

WHEREAS, the United States has partially constructed the Garrison Diversion Project, but the project features have not yet been utilized and require continuing maintenance; and

WHEREAS, during the past 45 years, the state of North Dakota and North Dakota Indian tribes have fully contributed their share of the Pick-Sloan compromise and have incurred substantial social, financial, economic, and environmental costs, but the anticipated benefits have not been forthcoming; and

WHEREAS, recent events show that federal officials are renegeing on promises that were made to the state of North Dakota when the state reluctantly accepted the reduced project as provided in the Garrison Diversion Unit Reformulation Act of 1986; and

WHEREAS, continued federal equivocation on key features, such as a connecting facility between the McClusky and New Rockford canals, will virtually assure that the project will remain nonfunctional, will preclude the state from receiving promised benefits, and will seriously reduce the potential for economic advances in North Dakota's future; and

WHEREAS, Fargo and Grand Forks will benefit from an assured supply of municipal and industrial water in the Sheyenne and Red rivers; and

WHEREAS, Minot and surrounding communities will benefit from an assured water supply system; and

WHEREAS, the Garrison Diversion Unit will provide a capability to stabilize Devils Lake; and

WHEREAS, the Garrison Diversion Unit will provide thousands of acres of irrigation, which is essential to support a stable livestock industry and to diversify North Dakota agriculture; and

WHEREAS, it appears to the Legislative Assembly that the state of North Dakota, through the Garrison Diversion Conservancy District, should assume a greater role in developing, constructing, operating, and maintaining the Garrison Diversion Project; and

WHEREAS, it also appears that the state of North Dakota should consider entering cost-share arrangements with the United States to complete key project features or to assume title to project features in order to assure that the project is not abandoned by the United States;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Garrison Diversion Conservancy District, with the cooperation of the State Water Commission, the governor, the Garrison Diversion Overview Committee, and each member of the North Dakota Congressional Delegation, to attempt to negotiate promptly, with the appropriate federal officials, a greater role for the state in the development, construction, operation, and maintenance of the Garrison Diversion Project.

Filed April 4, 1991

## CHAPTER 824

### SENATE CONCURRENT RESOLUTION NO. 4012

(Senators Nalewaja, Kelly, Lindgren, Mathern, Peterson, Tennefos)  
(Representatives R. Berg, Bernstein, Dorso, Gabrielson, Gorman,  
Kloubec, Larson, Payne, Pyle, Scherber, Schneider, Soukup)

## CHRIS SIMDORN CONGRATULATIONS

A concurrent resolution congratulating Chris Simdorn on receiving the Harlon Hill trophy and for his nationally recognized athletic achievements.

WHEREAS, Chris Simdorn, as quarterback of the North Dakota State University Bison football team, has led the Bison to two national NCAA Division II football championships within the past three seasons; and

WHEREAS, Chris Simdorn amassed the highest rushing yardage total for a quarterback in NCAA Division II history and the second highest rushing total for a quarterback in all of NCAA football history, with 3,313 yards over his regular season career; and

WHEREAS, Chris Simdorn's Bison career statistics, including 10 playoff games, show records of 4,186 yards rushing and 72 rushing touchdowns plus 2,529 passing yards and 24 passing touchdowns; and

WHEREAS, during his career the Bison won over 92 percent of the games in which they took the field with Chris Simdorn as their starting quarterback; and

WHEREAS, as further tribute to his leadership and athletic abilities, Chris Simdorn was named the winner of the 1990 Harlon Hill trophy as the nation's best player in NCAA Division II football;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly takes great pride and pleasure in extending its heartiest congratulations to Chris Simdorn for his outstanding achievements in the sport of collegiate football and wishes him well in his future endeavors; and

BE IT FURTHER RESOLVED, that the Secretary of State send enrolled copies of this resolution to Chris Simdorn, his family, and Bison coach Rocky Hager.

Filed January 18, 1991



## CHAPTER 825

### SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Nalewaja, Kelly, Lindgren, Mathern, Peterson, Tennesos)  
(Representatives R. Berg, Bernstein, Dorso, Gabrielson, Gorman,  
Kloubec, Larson, Payne, Pyle, Scherber, Schneider, Soukup)

## BISON FOOTBALL CONGRATULATIONS

A concurrent resolution congratulating the North Dakota State University Bison football team on winning the NCAA Division II football championship for the eighth time.

WHEREAS, the North Dakota State University Bison football team, coached by native North Dakotan Rocky Hager, completed an undefeated, untied 1990 season with fourteen wins, culminating in an overwhelming and record-setting 51-11 victory over Indiana University of Pennsylvania in the NCAA Division II championship; and

WHEREAS, the Bison have achieved NCAA Division II national football championships by acclamation in 1965, 1968, and 1969 and in playoff competition in 1983, 1985, 1986, 1988, and 1990; and

WHEREAS, the 1990 Bison football team was comprised of very talented individuals, including NCAA Division II most valuable player Chris Simdorn and NCAA Division II playoff rushing yardage recordholder Tony Satter, and the skills of the many talented individuals on this team were molded into a complete team success by dedication, hard work, and skilled coaching; and

WHEREAS, the Bison football program is the most successful program in NCAA Division II history, an accomplishment of which all North Dakotans can be justifiably proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly takes great pride and pleasure in extending to all members of the North Dakota State University Bison football team, head coach Rocky Hager and his staff, and North Dakota State University its heartiest congratulations for excellence in dedication and performance, resulting in another national championship; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration of North Dakota State University, all members of the North Dakota State University Bison football team, and head coach Rocky Hager and his staff.

Filed January 17, 1991

## CHAPTER 826

SENATE CONCURRENT RESOLUTION NO. 4014  
(Senators Kelsh, Freborg, Wogsland)  
(Representatives Gerntholz, Martin, Stofferahn)

### **AGRICULTURE VIABILITY ASSISTANCE URGED**

A concurrent resolution urging the President and Congress to take immediate steps to restore financial viability to agriculture.

WHEREAS, North Dakota has in recent years endured drought, insect infestation, low farm prices, and a weakened agricultural economy; and

WHEREAS, real net farm income has plummeted during the decade of the 1980s to the lowest point since recordkeeping began; and

WHEREAS, one out of six farmers in North Dakota is technically insolvent or has a debt-to-asset ratio in excess of 70 percent; and

WHEREAS, during the decade of the 1980s, North Dakota lost 6,500 farmers, the nation lost over a quarter of a million farms, and it is predicted that the rate of farm loss will double; and

WHEREAS, the loss of farm numbers and farm income has wreaked financial devastation on the main streets of rural North Dakota and has resulted in the massive outmigration of our young people; and

WHEREAS, each \$1 decrease per bushel in the price of wheat translates into a \$1.4 billion decrease to North Dakota's economy; and

WHEREAS, new farm legislation has not only failed to provide a reasonable safety net for family farm agriculture but can only be expected to further reduce market price levels, and continue devaluing farm assets;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the President and the Congress of the United States to take immediate administrative and legislative action to:

1. Increase commodity loan rates to the statutory rate to provide reasonable cost-of-production returns to producers;
2. Negotiate the creation of international food reserves in which both importing and exporting nations share in the costs of maintaining those reserves and in making necessary adjustments in times of surplus;

3. Maintain export credits available to the Soviet Union for purchases of wheat and feed grains, making the United States competitive with other grain exporting nations; and
4. Target farm program benefits to provide price protection to the level of production for the average-sized family farm; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President, the Secretary of Agriculture, each member of the United States Senate and House Agriculture Committees, and each member of the North Dakota Congressional Delegation.

Filed March 12, 1991

## CHAPTER 827

SENATE CONCURRENT RESOLUTION NO. 4016  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)

### PERSIAN GULF CRISIS

A concurrent resolution expressing support for the United States troops in the Persian Gulf, condemning the Iraqi invasion of Kuwait, and urging the President to exhaust every avenue in attempting to achieve a peaceful solution to the Persian Gulf crisis.

WHEREAS, North Dakota military men and women and the military men and women of the other nations of the world have recently been placed in harm's way; and

WHEREAS, the Iraqi invasion of Kuwait is a violation of international law and the treatment of the Kuwaiti citizens involve human rights violations of the very worst kind; and

WHEREAS, all avenues of peaceful resolution of the conflict in the Persian Gulf should be explored and exhausted, including full involvement by the United Nations;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly expresses its full support for the military personnel serving in the Persian Gulf and fervently hopes that these men and women will soon be safely home in the company of family, friends, and loved ones; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly condemns the Iraqi invasion of Kuwait and the continuing human rights violations committed on the Kuwaiti people; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly urges the United States government and the United Nations that all options be considered and all means exhausted in seeking a peaceful resolution to the conflict, and further resolved that if after all options are considered and all means exhausted in seeking a peaceful resolution to the conflict have failed the Fifty-second Legislative Assembly supports appropriate action by the United Nations and the President of the United States; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the presiding officers of the United States House of Representatives and the United States Senate, the Secretary of Defense, the Secretary of State, and to each member of the North Dakota Congressional Delegation.

Filed January 17, 1991

## CHAPTER 828

SENATE CONCURRENT RESOLUTION NO. 4017  
(Naaden)

### **NO-FAULT INSURANCE STUDY**

A concurrent resolution directing the Legislative Council to study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states.

WHEREAS, the unintended result of the operation and effect of North Dakota's no-fault insurance law has been higher motor vehicle insurance rates and greater litigation costs; and

WHEREAS, the experience in other states, such as Michigan, has been that a well-designed no-fault insurance law results, and should result, in lower motor vehicle insurance rates and lower litigation costs; and

WHEREAS, it is in the best interests of the citizens of this state to have a no-fault insurance law that provides lower motor vehicle insurance rates and less incidence of litigation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states to determine if this state's law should be modified or replaced to ensure lower motor vehicle insurance rates and fewer litigation costs for the citizens of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 829

### SENATE CONCURRENT RESOLUTION NO. 4019 (Stenehjem, Traynor)

#### **LAW ENFORCEMENT TRAINING FACILITY STUDY**

A concurrent resolution directing the Legislative Council to study methods for funding law enforcement training facilities and programs.

WHEREAS, adequate training facilities and programs are essential to ensuring the competence and professionalism of law enforcement officials; and

WHEREAS, current training facilities lack sufficient housing, office space, and areas for emergency vehicle and physical training and this often requires the search for and use of substitute facilities, the availability of which cannot be depended upon; and

WHEREAS, the future needs for training law enforcement and correctional officers in this state will require increased funding and the methods for providing adequate funding are uncertain;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods for funding law enforcement training facilities and programs and the role of the Peace Officers Standards and Training Board in administering the same; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 830

SENATE CONCURRENT RESOLUTION NO. 4021  
(Senators Streibel, Wogsland, Robinson)  
(Representatives Coats, R. Anderson, D. Olsen)

### CONSTITUTIONAL PROHIBITION ON FLAG DESECRATION

A concurrent resolution requesting that the Congress of the United States propose for ratification by the states an amendment to the federal Constitution to provide that Congress and the states would have the power to prohibit the physical desecration of the flag of the United States.

WHEREAS, although the right of free expression is part of the foundation of the United States Constitution, very carefully drawn limits on expression in specific instances have long been recognized as legitimate means of maintaining public safety and decency, as well as orderliness and productive value of public debate; and

WHEREAS, there are symbols of our national soul such as the Washington Monument, the United States Capitol, and memorials to our greatest leaders, which are the property of every American and are therefore worthy of protection from desecration and dishonor; and

WHEREAS, the flag of the United States to this day is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, and remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

WHEREAS, the law as interpreted by the United States Supreme Court no longer accords to the flag of the United States that reverence, respect, and dignity befitting the banner of that most noble experiment of a nation-state; and

WHEREAS, it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the flag of the United States of a proper station under law and decency;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Congress of the United States to propose to the several states for ratification an amendment to the federal Constitution to provide that Congress and the states would have the power to prohibit the physical desecration of the flag of the United States; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the North Dakota Congressional Delegation.

Filed March 26, 1991

## CHAPTER 831

SENATE CONCURRENT RESOLUTION NO. 4023  
(Senators David, Kinnoin, Redlin)  
(Representatives Howard, Skjervén, Nichols)

### CONGRESSIONAL COMPENSATION

A concurrent resolution for the ratification of the original second amendment to the Constitution of the United States, providing for a delay in any variances in compensation of members of Congress until an intervening election of the United States House of Representatives.

WHEREAS, the First Congress of the United States of America, at its first session begun on March 4, 1789, and held in New York, New York, in both houses, by a constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America, in the following words, to wit:

"THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution;

"RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring that the following [Article] be proposed to the Legislatures of the several States, as [an amendment] to the Constitution of the United States...which [Article], when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz:

"[An ARTICLE] in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

"Article the second...No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."; and

WHEREAS, Article V of the Constitution of the United States allows the Legislative Assembly of the State of North Dakota to ratify the aforementioned original second amendment to the Constitution of the United States; and

WHEREAS, the Supreme Court of the United States in 1939 ruled in the landmark case of Coleman v. Miller that if Congress does not specify a deadline on a particular proposed amendment's consideration by the state legislatures, then Congress itself is the final arbiter of whether too great



a time has elapsed between Congress' original submission of the particular amendment and the most recent state legislature's ratification of it, assuming that, as a consequence of that most recent ratification, the legislatures of three-fourths of the several states have, at one time or another, ratified it; and

WHEREAS, the Legislative Assembly of the State of North Dakota finds that the proposed original second amendment, quoted above, is still meaningful and needed as part of the United States Constitution and that the present political, social, and economic conditions are the same as or are even more demanding today than they were in the eighteenth century when the proposal was first offered by Congress; and

WHEREAS, the proposed original second amendment to the United States Constitution has already been ratified by the legislatures of the following states on the dates indicated, to wit; and

- Alaska on May 5, 1989 [135 Cong. Rec. H5485, S8054];
- Arizona on April 3, 1985 [131 Cong. Rec. H2060, S4750];
- Arkansas on March 5, 1987 [134 Cong. Rec. H3721, S7518];
- Colorado on April 18, 1984 [131 Cong. Rec. S17687; 132 Cong. Rec. H6446];
- Connecticut on May 13, 1987 [133 Cong. Rec. H7406, S11891];
- Delaware on January 28, 1790;
- Florida on May 31, 1990 [136 Cong. Rec. H5198, S10091];
- Georgia on February 2, 1988 [134 Cong. Rec. H2638, S5239];
- Idaho on March 23, 1989 [135 Cong. Rec. H1893, S7911];
- Indiana on February 19, 1986 [132 Cong. Rec. H1634, S4663];
- Iowa on February 7, 1989 [135 Cong. Rec. H836, S3509-10];
- Kansas on April 5, 1990 [136 Cong. Rec. H1689, S9170, E1740-41];
- Louisiana on July 6, 1988 [134 Cong. Rec. H5783, S9939];
- Maine on April 27, 1983 [130 Cong. Rec. H9097, S11017];
- Maryland on December 19, 1789;
- Minnesota on May 22, 1989 [135 Cong. Rec. H3258, H3678, S7655-56, S7912];
- Montana on March 11, 1987 [133 Cong. Rec. H1715, S6155];
- Nevada on April 26, 1989 [135 Cong. Rec. H2054, S10826];
- New Hampshire on March 7, 1985 [131 Cong. Rec. H1378, S3597];

New Mexico on February 13, 1986 [132 Cong. Rec. H827, S2207-08, S2300];  
North Carolina on December 22, 1789;  
Ohio on May 6, 1873 [70 Ohio Laws 409-10];  
Oklahoma on July 10, 1985 [131 Cong. Rec. H7263, S13504];  
Oregon on May 19, 1989 [135 Cong. Rec. H5692, H5972, S11123-24, S12150];  
South Carolina on January 19, 1790;  
South Dakota on February 21, 1985 [131 Cong. Rec. H971, S3306];  
Tennessee on May 23, 1985 [131 Cong. Rec. H6672, S10797, S13504];  
Texas on May 15, 1989 [135 Cong. Rec. H2594, S6726-27];  
Utah on February 25, 1986 [132 Cong. Rec. S6750, S7578; 133 Cong. Rec. H9866];  
Vermont on November 3, 1791;  
Virginia on December 15, 1791;  
West Virginia on March 10, 1988 [134 Cong. Rec. H2492, S4784-85];  
Wisconsin on June 30, 1987 [133 Cong. Rec. H7406, S12948, S13359]; and  
Wyoming on March 3, 1978 [124 Cong. Rec. 7910, 8265-66; 133 Cong. Rec. S12949];

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the proposed original second amendment to the Constitution of the United States of America, as quoted above, is hereby ratified by the Fifty-second Legislative Assembly of the State of North Dakota; and

BE IT FURTHER RESOLVED, that enrolled copies of this resolution be transmitted by the Secretary of State to the Archivist of the United States, to the Vice President of the United States, to the Speaker of the United States House of Representatives, and to the North Dakota Congressional Delegation with the request that it be printed in full in the Congressional Record.

Filed April 3, 1991

## CHAPTER 832

SENATE CONCURRENT RESOLUTION NO. 4024  
(Senators Nalewaja, Thane, Lips)  
(Representative D. Olsen)

### **NURSING HOME INSURANCE INCENTIVES URGED**

A concurrent resolution urging Congress and the President to take action to encourage citizens to plan for retirement needs to reduce the reliance of senior citizens on public financial assistance.

WHEREAS, the proportion of the United States' population over age 65 is projected to continue to increase; and

WHEREAS, constant inflation has eroded the financial independence of many senior citizens, who now find that they require public financial assistance, especially when their health fails and they require nursing home care; and

WHEREAS, the United States would benefit in all respects from federal government encouragement of advance planning, saving, and insurance for retirement needs; and

WHEREAS, provision of a federal income tax credit or deduction for premiums paid for nursing home insurance and other means of encouraging citizens to plan, save, and obtain insurance for retirement needs should be a priority area of study by the federal government;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the Congress of the United States and the President to provide a federal income tax credit or deduction for premiums paid for nursing home insurance and to find other means of encouraging citizens to plan, save, and obtain insurance for retirement needs, with the goal of reducing the needs of senior citizens for public financial assistance; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President, the chairmen of the Senate Labor and Human Resources Committee and Subcommittee on Aging and the House Select Committee on Aging and Subcommittees on Health and Long-term Care and Human Services, and to each member of the North Dakota Congressional Delegation.

Filed March 8, 1991

## CHAPTER 833

SENATE CONCURRENT RESOLUTION NO. 4025  
(Senators Tomac, Freborg)  
(Representatives DeWitz, Mahoney)

### MISSOURI RIVER BANK PROTECTION STUDY

A concurrent resolution urging the Congress of the United States and the United States Army Corps of Engineers to assume responsibility for Missouri River bank erosion downstream from all Pick-Sloan plan dams, including the Garrison Dam to Oahe Reservoir reach in North Dakota, and to begin an annual program of appropriating funds for the maintenance and construction of bank protection projects.

WHEREAS, the Flood Control Act of 1944, as amended by Senators O'Mahoney and Milliken, assured all 10 states within the Missouri River Basin equal benefits under a control and management program that came to be commonly known as the Pick-Sloan plan; and

WHEREAS, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan plan; and

WHEREAS, the Pick-Sloan plan provides major flood control benefits, recreational benefits, power supply benefits, and navigational benefits for states lying below Sioux City, Iowa, through construction of large reservoirs in states lying above that point, and by channelizing the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, at federal expense; and

WHEREAS, the Pick-Sloan plan reservoirs have been in place for many years, thus providing the downstream states in the Missouri River Basin all of the benefits promised in the Pick-Sloan plan for the past 35 years; and

WHEREAS, construction of facilities under the Pick-Sloan plan has, to date, resulted in \$3 billion of flood protection to downstream interests which continue to accrue and has allowed these downstream interests to develop the original flood plain of the Missouri River for industrial, municipal, and agricultural uses; and

WHEREAS, the United States Army Corps of Engineers has stabilized and continues to maintain the entire channel of the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, all at federal cost; and

WHEREAS, under the Pick-Sloan plan the state of North Dakota has sacrificed over 550,000 acres of land, much of which was prime agricultural land; and

WHEREAS, almost two-thirds of the inexpensive hydroelectric power generated by Garrison Dam in North Dakota, which was built pursuant to the Pick-Sloan plan, is utilized in states other than North Dakota; and

WHEREAS, the United States Army Corps of Engineers stated in its final report to Congress dated December, 1981, concerning Missouri River stream bank erosion that "bank erosion in this reach results in a permanent net loss of high value lands. This process, unless halted, would eventually transform the present river into a wide area of sandbars and channels, occupying an increasing proportion of the valley width between the bluffs"; and

WHEREAS, the lands adjacent to the Missouri River have been and will continue to be seriously eroded and permanently lost to the local landowners and the state of North Dakota because of reservoir management which releases highly fluctuating amounts of clear water capable of eroding and transporting large amounts of soil; and

WHEREAS, soil eroded from the banks of the Missouri River is being deposited as a delta in the headwaters of the Oahe Reservoir thereby causing the water table to rise under the adjacent land, and is increasing the frequency and severity of ice jam hazards and has, according to recent United States Army Corps of Engineers pronouncements, endangered 6,000 acres of land containing 40 homes and valuable farmland; and

WHEREAS, a similar bank erosion problem exists for a 58-mile reach on the South Dakota-Nebraska border downstream from the Gavins Point Dam and also below the Fort Peck Dam in Montana; and

WHEREAS, destructive bank erosion continues when high winter water releases for power generation occur, even in these drought years of sharply lower total annual releases; and

WHEREAS, the Water Resources Development Act of 1988 amended the Flood Control Act of 1944 and directed the Secretary of the Army to undertake measures, such as the maintenance and rehabilitation of existing structures, which the Secretary of the Army determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between Fort Peck Dam in Montana and a point 58 miles downstream of the Gavins Point Dam on the South Dakota-Nebraska border;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the United States Congress to assume responsibility for the protection of lands endangered below all Pick-Sloan dams by the operation of the Pick-Sloan plan; and

BE IT FURTHER RESOLVED, that the Fifty-second Legislative Assembly urgently requests the United States Congress to begin a program of annually appropriating funds to repair existing bank protection projects now in danger of complete failure and to begin to construct bank protection projects in the most critical locations; and

BE IT FURTHER RESOLVED, that Senator Quentin N. Burdick, Senator Kent Conrad, and Congressman Byron L. Dorgan are urged to work diligently with the senators and congressmen of the states of Montana, South Dakota, and Nebraska to secure appropriations of these necessary funds; and

BE IT FURTHER RESOLVED, that funding for this project not be a normal federal water project appropriation, but rather be charged to the operation of the Pick-Sloan plan; and

BE IT FURTHER RESOLVED, that copies of this resolution be forward by the Secretary of State to the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; Governor George A. Sinner; the members of the North Dakota State Water Commission; and each member of the North Dakota, South Dakota, Nebraska, and Montana congressional delegations.

Filed March 26, 1991

## CHAPTER 834

SENATE CONCURRENT RESOLUTION NO. 4026  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)

### HIGHER EDUCATION AWARENESS DAY

A concurrent resolution declaring Wednesday, February 13, 1991, as Higher Education Awareness Day.

WHEREAS, the state of North Dakota has a tradition of supporting its institutions of higher education and of recognizing the students who attend those institutions; and

WHEREAS, students attending these institutions of higher education are visiting the Legislative Assembly to express their concerns about the future of higher education in this state; and

WHEREAS, the Legislative Assembly acknowledges the need to preserve the quality of higher education the state has enjoyed in the past; and

WHEREAS, the Legislative Assembly acknowledges the students at the institutions of higher education who would like to express their appreciation to the members of the Legislative Assembly for their hard work and the attention that they have given to the status of higher education in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly declares Wednesday, February 13, 1991, to be North Dakota Higher Education Awareness Day.

Filed February 5, 1991

## CHAPTER 835

SENATE CONCURRENT RESOLUTION NO. 4029  
(Senators Stenehjem, Robinson)  
(Representatives DeMers, Oban)

### **AMERICANS WITH DISABILITIES ACT STUDY**

A concurrent resolution directing the Legislative Council to study the Americans with Disabilities Act and its expected impact on state and local governments.

WHEREAS, in July 1990, Congress passed Public Law 101-336, commonly known as the Americans with Disabilities Act; and

WHEREAS, the Americans with Disabilities Act will be enforced beginning in July 1992 for employers with 25 or more employees; and

WHEREAS, it is expected that the provisions of the Americans with Disabilities Act will require extensive changes at the state and local government levels for state and local governments to come into compliance with the Act; and

WHEREAS, the costs of those changes may have a tremendous fiscal impact on state and local governments; and

WHEREAS, it will be necessary to educate state and local officials as to the effects of the Americans with Disabilities Act on their government entities; and

WHEREAS, the Governor has appointed a Governor's Americans with Disabilities Act implementation committee;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the Americans with Disabilities Act and its expected impact on state and local governments in conjunction with the Governor's Americans with Disabilities Act implementation committee, and devise a system of informing state and local officials of the impact of the Americans with Disabilities Act on state and local governments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991



## CHAPTER 836

### SENATE CONCURRENT RESOLUTION NO. 4031 (Stenehjem)

#### **INDIGENT PERSON GUARDIANSHIP STUDY**

A concurrent resolution directing the Legislative Council to study the desirability and feasibility of establishing a public guardianship program for indigent persons.

WHEREAS, there are many persons throughout the state of North Dakota who are incapacitated to the extent they cannot give informed consent required to receive residential, medical, legal and financial decisions and are in need of guardianship services; and

WHEREAS, many counties do not have a public administrator and in some counties that have appointed a public administrator the position is not funded by either the county or the state; and

WHEREAS, federal and state regulations regarding long term facilities require appropriate protective arrangements, such as guardianships, for incapacitated residents; and

WHEREAS, many incapacitated persons do not have sufficient financial resources to pay for the costs of guardianship proceedings; and

WHEREAS, many incapacitated persons do not have a relative or other person who is able or willing to serve as their guardian; and

WHEREAS, all incapacitated persons, regardless of their financial status, should be provided necessary protective arrangements such as guardianship services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the desirability and feasibility of establishing a public guardianship program to provide guardianship services to those indigent persons in need of guardianship who cannot afford guardianship services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 837

### SENATE CONCURRENT RESOLUTION NO. 4032 (Stenehjem)

#### **CIVIL LEGAL SERVICES STUDY**

A concurrent resolution directing the Legislative Council to study the desirability and feasibility of enhancing and improving the ability of existing civil legal services programs to provide for the delivery of civil legal services to the poor and developing equal access to civil legal services for the poor.

WHEREAS, the number of persons in North Dakota with legal problems requiring attorney assistance continues to increase; and

WHEREAS, indigent persons have a statistically larger number of civil legal problems per household than the general population; and

WHEREAS, the ratio of private attorneys to the general population in North Dakota is approximately one to 600 and the ratio of full-time attorney equivalents available to provide civil legal services to indigent North Dakotans is one to 8,000; and

WHEREAS, the number of indigent persons who contact civil legal services providers far exceeds the ability to meet their needs; and

WHEREAS, many more indigent persons do not seek legal services because they are unaware they have problems that can be addressed by the legal system; and

WHEREAS, denial of civil legal services to the poor is a critical societal issue; and

WHEREAS, lack of access to civil legal services for indigents can result in loss of shelter, food, and legally protected property, and other of life's most basic necessities; and

WHEREAS, this impacts most significantly on innocent children in indigent households;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the desirability and feasibility of enhancing and improving the ability of existing civil legal services programs to stabilize and equalize the availability and accessibility of civil legal services to the poor; and

BE IT FURTHER RESOLVED, that the Legislative Council study the desirability and feasibility of a state constitutional right to legal representation in civil matters generally or in specified cases involving the most basic necessities of life.

## CHAPTER 838

SENATE CONCURRENT RESOLUTION NO. 4033  
(Senators Nalewaja, Lindgren)  
(Representative D. Olsen)

### **CERTIFICATE OF NEED LAW STUDY**

A concurrent resolution directing the Legislative Council to study the cost containment effect of the certificate of need law.

WHEREAS, the certificate of need law contained in North Dakota Century Code Chapter 23-17.2 was enacted in 1971; and

WHEREAS, the purpose of the certificate of need law is to ensure the review and evaluation of health care facilities' building or expansion plans so that the building or expansion does not exceed the needs of patients or of persons in the area to be served and does not exceed the economic means of the state; and

WHEREAS, there has been no quantification of what the cost containment effect has been as a result of the certificate of need law requirements; and

WHEREAS, the continued necessity for the certificate of need law has been questioned;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the certificate of need law and evaluate its access and cost containment implications; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 839

SENATE CONCURRENT RESOLUTION NO. 4034  
(Senate Education Committee)

### **SPECIAL EDUCATION FUNDING STUDY**

A concurrent resolution directing the Legislative Council to study the financial support for mandated special education programs and the method by which the Department of Public Instruction distributes the state grant program funds.

WHEREAS, special education programs in our districts have grown and developed over the years to meet the comprehensive mandates of the state and federal government; and

WHEREAS, the special education programs provide appropriate and needed services to our special students; and

WHEREAS, the financial support of mandated programs is left primarily to the local school districts, thereby placing a great burden on the local property tax and creating unhealthy competition for local dollars between special education and other programs; and

WHEREAS, the limited state funding is distributed on a new formula system that considers units of service, program costs, and program needs; and

WHEREAS, the issues related to low incident-high cost programs have created a myriad of problems relating to tuition charges, boarding care costs, and related services costs; and

WHEREAS, our districts contend that special education programs should be reimbursed by the state at 100 percent of the excess costs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council, with the assistance of the Department of Public Instruction, study the state financial support for mandated special education programs and the method by which the Department of Public Instruction distributes the state grant program funds; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 840

SENATE CONCURRENT RESOLUTION NO. 4035  
(Senators Nalewaja, Heinrich)  
(Representatives Gates, Carlson)

### ADULT LITERACY PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the provision and funding of adult literacy programs.

WHEREAS, 53,000 North Dakota adults are considered functionally illiterate; and

WHEREAS, the people of our state recognize that the ability and opportunity to read are of fundamental importance to all people; and

WHEREAS, this democracy was founded by, and is now dependent upon, a literate, informed society; and

WHEREAS, President George Bush and the National Governors' Association have established a national goal that by the year 2000 every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship; and

WHEREAS, illiteracy has a significant impact on worker productivity and our economy; and

WHEREAS, changing technology in the workplace requires more sophisticated reading, reasoning, and technical skills; and

WHEREAS, illiteracy results in unemployment, social welfare costs, and a weakness in efforts to strengthen the state's economic base; and

WHEREAS, all North Dakotans should be offered an opportunity to gain the ability to read at any age;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the provision of adult literacy programs in North Dakota and methods of funding adult literacy programs and services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 841

SENATE CONCURRENT RESOLUTION NO. 4036  
(Senators Graba, Schoenwald)  
(Representative Oban)

### **WORKERS COMPENSATION BUREAU STUDY**

A concurrent resolution directing the Legislative Council to study the structure, organization or consolidation with Job Service North Dakota, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and rehabilitation staff.

WHEREAS, the North Dakota workers' compensation law is designed to provide sure and certain relief to employees injured in the course of their employment; and

WHEREAS, premium income has been significantly less than fund expenditures in recent years and fund equity has been greatly reduced; and

WHEREAS, the dramatic increase in the costs of providing workers' compensation and in the complexity of litigation involving the bureau in the last 10 years as well as the depleted nature of the workers' compensation fund may jeopardize the ability of the bureau to provide compensation to injured employees; and

WHEREAS, the bureau's claims analysts and rehabilitation staff should be qualified and adequately trained so as to provide consistent claims administration and rehabilitation programs; and

WHEREAS, a number of plans to reorganize or restructure the bureau have been proposed; and

WHEREAS, insufficient data is available to make reasoned and informed decisions concerning major changes in the structure and organization of the bureau, claims adjudication, benefits, premiums, and other matters that may affect the solvency of the fund;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the structure, organization or consolidation with Job Service North Dakota, and administration of the Workers Compensation Bureau, including the qualifications of the bureau's claims analysts and rehabilitation staff; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 842

SENATE CONCURRENT RESOLUTION NO. 4037  
(Robinson)

### FIRE DISTRICT AID STUDY

A concurrent resolution directing the Legislative Council to study all aspects of state aid to local fire departments and districts.

WHEREAS, the efficient and capable delivery of fire protection services to this state's citizens is dependent upon adequate and predictable financial support; and

WHEREAS, an adequate and equitable system for determining state aid to help finance the cost of local fire protection is critical to the protection of citizens and their property; and

WHEREAS, state aid distributions to local fire departments and districts are determined on the basis of insurance premiums and appropriated from the reserves of the state fire and tornado fund; and

WHEREAS, a study is needed of methods of determining payments to fire protection districts, the level of statewide funding, the ability to anticipate revenues at the local level, changes in levels of insurance purchased in rural districts, consistency of payments received, and how existing reporting and payment distribution processes work in practice;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the method of providing and determining state aid to local fire departments and districts and place particular emphasis on the reliability and consistency of revenues distributed; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 843

SENATE CONCURRENT RESOLUTION NO. 4038  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)

### WATER DEVELOPMENT FUNDING STUDY

A concurrent resolution directing the Legislative Council to investigate and recommend a program or programs for funding and financing water resource development throughout the state.

WHEREAS, many areas within the state do not have adequate supplies of good quality water for municipal and domestic uses, or for irrigation, industry, recreation, wildlife, or other uses; and

WHEREAS, adequate supplies of good quality water are essential for the social and economic stability of the citizens of the state; and

WHEREAS, development of programs and projects to meet current and future water needs for the benefit of the citizens of North Dakota is a matter of highest need and priority; and

WHEREAS, North Dakota must undertake and complete several major water initiatives to preserve a strong economic base and quality of life, including the Southwest Pipeline, Northwest Water Supply, Souris River Flood Control, Devils Lake Stabilization, Sheyenne River Flood Control, and other projects and programs throughout the state; and

WHEREAS, it may be necessary for the state to play a greater role in the development, construction and funding of its highest priority water distribution system, the Garrison Diversion Project, to provide the necessary supply and distribution of Missouri River water to water short areas in North Dakota; and

WHEREAS, water development and water management are critical to develop and sustain a strong economic base and quality of life; and

WHEREAS, there is a need to establish adequate funding or financing capabilities to meet critical needs for water facilities and programs now and in the future;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is hereby directed and authorized to study methods that could be used to fund and finance critical water projects and programs, including construction of facilities; and

BE IT FURTHER RESOLVED, that the Legislative Council is encouraged to utilize the services of a citizens advisory committee consisting of



appropriate citizens and state officials to be selected by the chairman of the interim committee charged with the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Legislative Assembly at the appropriate time.

Filed March 26, 1991

## CHAPTER 844

SENATE CONCURRENT RESOLUTION NO. 4039  
(Tallackson, Nelson)

### **WATER RIGHTS AND PERMITTING STUDY**

A concurrent resolution directing the Legislative Council to study the priority of water rights and North Dakota's water permitting process.

WHEREAS, a clean, adequate, and dependable supply of water is essential to the health, welfare, and general well-being of all citizens of North Dakota; and

WHEREAS, future economic development in this state requires the availability of clean, adequate, and dependable supplies of water while ensuring the availability of water for domestic consumption; and

WHEREAS, the prior appropriation doctrine may protect older and lesser water uses and thus not put water to its highest and most beneficial use; and

WHEREAS, Senate Bill No. 2283, which was not enacted by the Fifty-second Legislative Assembly of North Dakota, would have established the following order of priority for water rights acquired after its effective date: (1) domestic use; (2) municipal use; (3) livestock use; (4) irrigation use; (5) industrial use; and (6) fish, wildlife, and recreation use;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the priority of water rights and North Dakota's water permitting process; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 845

SENATE CONCURRENT RESOLUTION NO. 4040  
(Maxson, Stenehjem)

### ADMINISTRATIVE HEARINGS STUDY

A concurrent resolution directing the Legislative Council to study the conduct of administrative hearings by state agencies.

WHEREAS, the Administrative Agencies Practice Act, chapter 28-32, provides for, besides administrative agency rulemaking procedures, administrative agency hearing practices and procedures, as well as methods of appealing administrative agency orders; and

WHEREAS, it is the purpose of the Administrative Agencies Practice Act to standardize administrative agency hearing practices and procedures for all administrative agencies; and

WHEREAS, there are state agencies, or parts thereof, not subject to and not required to follow the hearing practices and procedures provisions of chapter 28-32; and

WHEREAS, there are state agencies, or parts thereof, that are not required to use independent hearings officers to preside over administrative hearings; and

WHEREAS, certain efficiencies and fairness may be accomplished by requiring all state agencies to follow chapter 28-32 in regard to its hearing practices and procedures provisions and by requiring all state agencies to use independent hearings officers to preside over administrative agency hearings;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is directed to conduct a study of the application of the chapter 28-32 administrative agency hearing practices and procedures provisions to all state agencies, boards, bureaus, and commissions, including agencies or departments under the administration of elected officials, whether any agency, board, bureau, or commission should be exempted from the hearing practices and procedures provisions of chapter 28-32, whether independent hearings officers ought to preside over all state administrative hearings, and whether an office of administrative hearings as a separate executive branch agency ought to be established. All agencies, boards, bureaus, and commissions, including elected officials, shall cooperate with the Legislative Council in the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 846

SENATE CONCURRENT RESOLUTION NO. 4041  
(Senators Krebsbach, Lindgren)  
(Representative Porter)

### TAX PREFERENCES STUDY

A concurrent resolution directing the Legislative Council to study tax preferences under existing law, with emphasis on prevention of unfair competitive advantages to entities receiving tax preferences.

WHEREAS, many provisions of law allow tax preferences for various worthy purposes including charitable, educational, medical, healthcare, agricultural, industrial, and other purposes; and

WHEREAS, in changing economic and other circumstances an entity that receives a tax preference may come into direct business competition with a private concern that does business without benefit of a tax preference; and

WHEREAS, it is incumbent upon the Legislative Assembly to assure that tax preferences that have been granted in the past continue to accomplish the purposes for which they were granted and do not operate to provide a competitive advantage in situations that were not anticipated at the time the tax preferences were created;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the tax preferences allowed under existing law with emphasis on preferences under sales and use, income, and property taxes, to the end that unfair competitive advantages are eliminated in situations in which otherwise exempt activities come into direct competition with private business concerns; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 3, 1991

**CHAPTER 847****SENATE CONCURRENT RESOLUTION NO. 4042  
(Maxson)****LAW ENFORCEMENT AND REGULATORY STUDY**

A concurrent resolution directing the Legislative Council to study law enforcement and regulatory activities in the state of North Dakota.

WHEREAS, the function of law enforcement is of primary concern to the people of North Dakota; and

WHEREAS, at present the authority and responsibility for law enforcement and regulatory activities at the state level is dispersed among various departments and agencies, including the State Highway Patrol, State Radio Communications, Bureau of Criminal Investigation, State Fire Marshal, Department of Corrections, and Division of Emergency Management; and

WHEREAS, it is recognized that such divergence of authority and responsibility may lend itself to duplication in efforts among the state departments and agencies and local law enforcement officials; and

WHEREAS, throughout the years there have been several legislative proposals concerning the organization, functions, and duties of the various law enforcement and regulatory agencies; and

WHEREAS, there are many who believe that creation of a department of public safety would best serve the interests of the state for providing the most efficient and economical enforcement in regulatory services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study law enforcement and regulatory activities in the state of North Dakota and consider the feasibility of the creation of a department of public safety; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 3, 1991

## CHAPTER 848

SENATE CONCURRENT RESOLUTION NO. 4043  
(Senators Stenehjem, Maxson)  
(Representatives Clayburgh, Kretschmar)

### COURT CONSOLIDATION MONITORING STUDY

A concurrent resolution directing the Legislative Council to review and monitor the implementation of legislation establishing a single trial court of general jurisdiction.

WHEREAS, the people of North Dakota in 1976 approved a new Judicial Article of the Constitution of North Dakota establishing a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law; and

WHEREAS, subsequent initial efforts resulted in substantial unification of the judicial system through consolidation of county courts by the 1981 Legislative Assembly; and

WHEREAS, the 1991 Legislative Assembly considered further unification of the judicial system, enacting House Bills No. 1516 and 1517 which provide a transition process for establishing a single trial court of general jurisdiction through the abolition of county courts and the provision for additional district court judgeships, with reduction in the total number of judges to meet a numerical goal set by the Legislative Assembly; and

WHEREAS, it is imperative that the implementation of this legislation be monitored by the legislative branch to ensure that a unified, consolidated court system is accomplished;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council review and monitor the implementation of 1991 House Bills No. 1516 and 1517 during the 1991-92, 1993-94, and 1995-96 interims in order to determine and ensure that a unified, consolidated court system is accomplished; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third, Fifty-fourth, and Fifty-fifth Legislative Assemblies.

Filed March 26, 1991

## CHAPTER 849

### SENATE CONCURRENT RESOLUTION NO. 4044 (Kelsh)

### **CREDITOR REMEDY STUDY**

A concurrent resolution directing the Legislative Council to study court cases and state law regarding claim and delivery, as well as attachment.

WHEREAS, each party in a debtor-creditor relationship has basic rights to the property securing the debt; and

WHEREAS, one remedy available to a creditor is to claim the immediate delivery of the personal property involved; and

WHEREAS, North Dakota Century Code chapter 32-07, relating to claim and delivery, has remained virtually unchanged since original adoption of this remedy by the Territorial Legislature in 1877; and

WHEREAS, another remedy to a creditor is to attach the property involved; and

WHEREAS, North Dakota law governing attachment was originally enacted in 1877, declared unconstitutional in 1975, reenacted in 1977, declared unconstitutional in 1990, and is in the process of amendment by the 1991 Legislative Assembly through Senate Bill No. 2066; and

WHEREAS, these laws, which govern the repossession of personal property, should be reviewed to assure protection of the interests of the creditor and the debtor in light of recent court decisions and current commercial practices;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study court cases and state law regarding claim and delivery, as well as attachment; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 850

### SENATE CONCURRENT RESOLUTION NO. 4045 (Graba, Nalewaja)

## **BUILDING CODE ADMINISTRATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating all building and construction code administration responsibilities under one authority.

WHEREAS, during the 1989-90 interim the Legislative Council's Political Subdivisions Committee conducted a study of administration of building and mechanical code enforcement at the state and local level; and

WHEREAS, the committee received testimony indicating that at least seven state agencies or departments administer various building or construction code enforcement responsibilities; and

WHEREAS, consolidation of all building and construction code responsibilities under one authority may result in greater building and construction code uniformity and result in cost savings for the state and for the building and construction industries;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of consolidating all building and construction code responsibilities under one authority; and

BE IT FURTHER RESOLVED, that the Legislative Council in carrying out this study consult with representatives from the North Dakota Building Officials Association, the North Dakota Association of Builders, the Associated General Contractors of North Dakota, the National Electrical Contractors Association, the North Dakota Apartment Association, the North Dakota Association of Counties, the North Dakota Association of Plumbing, Heating and Mechanical Contractors, the North Dakota Association of Realtors, the North Dakota Building Construction Trade Council, the North Dakota Building Trades, the North Dakota Chapter of the American Institute of Architects, the North Dakota Consulting Engineers Council, Inc., the North Dakota Electrical Workers Council, the North Dakota Land Improvement Contractors, the North Dakota League of Cities, the North Dakota Manufactured Housing Association, the North Dakota Minority Contractors Association, the North Dakota Society of Professional Engineers, the North Dakota Society of Professional Land Surveyors, the North Dakota State Boiler Inspector, the North Dakota State Electrical Board, the North Dakota State Plumbing Board, the State Fire Marshal, the Systems Builders Association, Dakota Chapter, and other building and construction industry representatives; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 3, 1991



## CHAPTER 851

SENATE CONCURRENT RESOLUTION NO. 4046  
(Kelsh, Marks, Kinnoin, Langley, Freborg)

### PEST MANAGEMENT INTEGRATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting an integrated pest management law.

WHEREAS, pests come in many forms, and various laws provide for the control of insects, nematodes, diseases, weeds, animals, and birds; and

WHEREAS, pests can be detrimental to crop production, livestock production, and stored grains, as well as to the welfare of persons residing in the area where pests are found; and

WHEREAS, control or eradication of pests may best be accomplished through coordinated efforts of entities such as integrated pest management districts; and

WHEREAS, Senate Bill No. 2224, which would have provided for integrated pest management districts, failed to pass the Senate of the Fifty-second Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of adopting an integrated pest management law; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 852

SENATE CONCURRENT RESOLUTION NO. 4047  
(Senators Wogsland, Evanson)  
(Representatives Rydell, Meyer)

### HOSPITAL ACCESS TO CAPITAL STUDY

A concurrent resolution directing the Legislative Council to study the availability of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring that capital is available at the lowest possible cost.

WHEREAS, small, medium, and large hospitals require access to capital in order to maintain equipment and facilities in accordance with state and federal standards; and

WHEREAS, local capital sources are often limited, unavailable, or available but only at a significantly higher cost than regional or national sources; and

WHEREAS, the cost of capital plays a significant role in the financial viability of North Dakota hospitals; and

WHEREAS, a hospital is often the largest employer in a geographic area and the financial viability of a hospital directly affects the financial viability of the entire area; and

WHEREAS, it is in the interest of all North Dakotans that capital be available to hospitals at the lowest possible cost;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the availability and cost of capital to North Dakota hospitals and the role of the Bank of North Dakota in assuring the availability of necessary capital at the lowest possible cost; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 853

SENATE CONCURRENT RESOLUTION NO. 4048  
(Senators Nalewaja, Tennefos, DeKrey)  
(Representatives Larson, D. Olsen)

### NURSING HOME INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study means of providing incentives for individuals to obtain long-term care insurance.

WHEREAS, the cost to the state of maintaining individuals in nursing homes continues to grow and is currently estimated to cost the state well over \$100 million for the 1991-93 biennium; and

WHEREAS, a significant opportunity to reduce costs to the state of maintaining individuals in nursing homes exists in the purchase by individuals of lifetime long-term care insurance coverage; and

WHEREAS, it would benefit the state and its residents if incentives can be found to encourage individuals to purchase and maintain lifetime long-term care insurance coverage; and

WHEREAS, legislation in Congress may provide federal incentives for individuals to maintain lifetime long-term care insurance coverage and detailed study of this issue should be conducted at the state level to determine the potential benefits of incentives for purchase of lifetime long-term care insurance coverage;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the desirability and feasibility of providing incentives in the form of income tax credits or other methods to encourage individuals to obtain lifetime long-term care insurance coverage, with the goal of reducing the costs to state government of maintaining individuals in nursing homes or of providing for home health care or basic care; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 854

### SENATE CONCURRENT RESOLUTION NO. 4049 (Naaden, Nething)

#### **INVESTMENT BOARD INVESTMENT STUDY**

A concurrent resolution directing the Legislative Council to study investment of funds under the control of the State Investment Board.

WHEREAS, the State Investment Board is responsible for investment of funds of over \$1 billion in value; and

WHEREAS, the investment of funds by the State Investment Board is principally in out-of-state investments, with resulting benefits to out-of-state interests; and

WHEREAS, the possibility of investing funds under the control of the State Investment Board within the state of North Dakota should be investigated to determine the present level of investment within this state and whether the state would be better served by resulting economic development in this state if a greater portion of state investment funds were invested in this state provided the in-state investments yield an equal or better return for the State Investment Board;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council conduct a study of the feasibility and desirability of increased investment of State Investment Board funds within this state to promote economic development; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 855

SENATE CONCURRENT RESOLUTION NO. 4050  
(Kelly, Lindgren, Mushik, Thane)

### **CHILD SUPPORT FEDERAL INCENTIVE STUDY**

A concurrent resolution directing the Legislative Council to study the distribution of child support enforcement incentive payments made by the federal government.

WHEREAS, the Office of Child Support Enforcement of the United States Department of Health and Human Services provides incentive payments to the states based on the efficiency and effectiveness of state and local child support enforcement programs; and

WHEREAS, the North Dakota Department of Human Services retains 25 percent of federal incentive payments to defray costs of administering the statewide program and 75 percent of the incentive payments are distributed to the counties; and

WHEREAS, alternative methods of distributing the incentive payments should be considered to determine whether the current method is equitable and appropriate;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the present method of distribution of federal incentive payments for child support enforcement and the possibility that all payments could be distributed to the counties and regional child support enforcement units;

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 856

SENATE CONCURRENT RESOLUTION NO. 4051  
(Senators Kelly, Schoenwald)  
(Representatives Gabrielson, DeMers)

### STATEWIDE INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of providing basic statewide health and work-related accident insurance to all North Dakota workers and their dependents.

WHEREAS, all North Dakota workers and their dependents deserve to have access to basic health and work-related accident insurance; and

WHEREAS, by incorporating a large number of subscribers in a risk pool, the insurance premiums could be kept affordable for public and private entities, as well as individuals, and even result in a reduced expenditure of tax dollars by political subdivisions; and

WHEREAS, a subscriber's premium payments could be set in accordance with the risk involved in the subscriber's employment; and

WHEREAS, a subscriber's premium payments could be adjusted according to the subscriber's income;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of providing basic health and work-related accident insurance to all North Dakota workers and their dependents, review the scope of existing state plans and the feasibility of expanding those plans as well as incorporating coverage for rehabilitation and job training, and explore the availability of federal dollars for the initiation of a pilot project; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 857

SENATE CONCURRENT RESOLUTION NO. 4052  
(Senators Mushik, Stenehjem)  
(Representatives DeMers, Rydell, Schneider)

### FOSTER HOME FIRE AND SAFETY CODE STUDY

A concurrent resolution directing the Legislative Council to study North Dakota family foster home fire and safety codes.

WHEREAS, there is a growing need for family foster homes for youth; and

WHEREAS, restrictive fire codes keep certain foster homes from being licensed; and

WHEREAS, the lack of uniformity in adoption of, and interpretation of, the state fire and safety standards keeps certain family foster homes from being licensed or relicensed; and

WHEREAS, the lack of family foster homes causes the unnecessary placement of some youth in group or restrictive residential homes at a greater cost per placement; and

WHEREAS, the Child Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) states "to encourage family reunification, a state must attempt to place a child in close proximity to the family and in the least restrictive setting"; and

WHEREAS, the North Dakota Department of Human Services held a public hearing on December 16, 1988, on fire and safety inspections for family foster care, but has yet to develop and implement new standardized procedures for licensing foster homes for youth;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study and analyze North Dakota fire and safety codes and regulations relating to the licensure of family foster homes to resolve inconsistencies among North Dakota regions in fire and safety inspections, with an emphasis on the evaluation of fire and safety code restrictions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 26, 1991

## CHAPTER 858

SENATE CONCURRENT RESOLUTION NO. 4053  
(Senators Stenehjem, Lindgren, Nalewaja)  
(Representatives Kelsch, Price, St. Aubyn)

### DEPENDENCY TREATMENT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons.

WHEREAS, the North Dakota 2000 Committee recommended that state government functions be examined for possible privatization; and

WHEREAS, one of the premises underlying privatization is that, because of competition, private firms are compelled to provide goods and services for less cost and in a more efficient manner than government agencies; and

WHEREAS, licensed firms are available to contract for many of the services that the Department of Human Services is required to provide for the treatment of alcohol and drug dependent persons under North Dakota Century Code Chapter 54-38; and

WHEREAS, it has been argued by some that the Department of Human Services may have established facilities and programs in the treatment of alcoholics and drug dependent persons without fully exploring the feasibility and desirability of contracting with existing private agencies for education, research, casework, institutional and medical facilities, personnel, and services by private agencies, and without determining whether the department is competing unnecessarily and unfairly with the private sector, and without considering the quality of care provided by government and the private sector;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of the Department of Human Services contracting with the private sector for the treatment of alcohol and drug dependent persons; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991



## CHAPTER 859

### SENATE CONCURRENT RESOLUTION NO. 4055 (Satrom)

#### STATE COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study state institution and agency pay practices.

WHEREAS, the state of North Dakota does not have a compensation plan offering state employees long-term career opportunities; and

WHEREAS, the development of an acceptable compensation plan by the Legislative Assembly would encourage persons to seek employment with the state of North Dakota; and

WHEREAS, current promotions and advancements are generally funded within the limits of average salary increases or moneys resulting from unexpected terminations which limits state agencies and institutions in providing increases to rapidly advancing highly skilled personnel; and

WHEREAS, although state employees may prefer to continue employment with their present agency, salary advancement may only be possible for those employees if they seek employment with other state agencies and institutions; and

WHEREAS, state agencies and institutions have encountered a drop in the number of persons interested in state employment in entry level positions, particularly in managerial and professional fields; and

WHEREAS, the lack of resources to fund compensation increases for persons during their early years of state employment when their value is increasing at a more rapid rate than available funding results in costly turnover problems for state agencies and institutions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state's compensation plan to develop recommendations to the next Legislative Assembly for the development of a long-term compensation plan which offers incentives to persons to work for the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 860

SENATE CONCURRENT RESOLUTION NO. 4056  
(Kelsh, Dotzenrod)

### **AGRICULTURAL COMMODITY SALE STUDY**

A concurrent resolution directing the Legislative Council to study problems relating to the sale of agricultural commodities.

WHEREAS, presently a wide variety of contracts are made available to farmers and ranchers to provide a measure of income assurance and stability; and

WHEREAS, agricultural contracting is likely to expand due to the provisions of the 1990 farm bill and increased emphasis on agricultural diversification and specialty crops; and

WHEREAS, the perishable nature of agricultural commodities, the vulnerable financial position of many farmers, and the difficulty faced by farmers in assessing the financial strength of buyers can create risks for farmers who engage in agricultural contracting;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the present contracts available to North Dakota farmers and ranchers and address potential risks contained in current contracting practices as well as laws and bills from other states affecting agricultural contracting; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 861

SENATE CONCURRENT RESOLUTION NO. 4057  
(Committee on Appropriations)

### **BASIC CARE PROGRAM STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a basic care program.

WHEREAS, currently counties provide optional supplementation and general assistance payments for needy individuals residing in basic care facilities; and

WHEREAS, the state of North Dakota has provided state matching of those payments, prior to budget reductions during the 1989-91 biennium; and

WHEREAS, a detailed study needs to be conducted to review the feasibility and desirability of establishing a state basic care program, including services to be funded and appropriate state, county, and federal financial responsibilities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a state basic care program, including definition of services to be provided and appropriate state, county, and federal financial responsibilities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 862

SENATE CONCURRENT RESOLUTION NO. 4058  
(Jerome)  
(Approved by the Committee on Delayed Bills)

### TRIBAL MISDEMEANOR JURISDICTION URGED

A concurrent resolution urging Congress to enact legislation giving Indian tribes criminal misdemeanor jurisdiction over all Indians on reservations and to review the Indian Civil Rights Act to ensure that the constitutional rights of all Indians are protected.

WHEREAS, the Supreme Court of the United States, in Duro v. Reina, 110 S.Ct. 2053 (1990), has reversed 200 years of the exercise by Indian tribes of criminal misdemeanor jurisdiction over all Indians residing on their reservations by ruling that each tribe retains such powers only over Indians enrolled in their respective tribe; and

WHEREAS, this ruling displays a lack of understanding of the reality, history, and demographics of Indian country including the fact that there are tens of thousands of Indians living on reservations who are not enrolled at that given reservation; and

WHEREAS, a nonenrolled Indian may have lived on a reservation for all of his or her life, have intermarried with a member who is enrolled, have had children with the enrolled member, and may own property on the reservation; and

WHEREAS, such a nonenrolled Indian is eligible for federal programs for which any Indian would be eligible; and

WHEREAS, for purposes of law enforcement, tribes have never distinguished between enrolled and nonenrolled Indians; and

WHEREAS, the state of North Dakota does not have the funding available to hire the extra police, investigators, prosecutors, and judges or to build the jails that would be necessary to prosecute misdemeanor crimes by Indians within the boundaries of Indian reservations and may not be able to successfully assert jurisdiction even if such funds were available; and

WHEREAS, the nontaxable status of reservation trust lands combined with the relative poverty of most Indian people do not offer any opportunity to raise the additional revenue that would be required to take over such a large job if jurisdiction were established; and

WHEREAS, the Court indicated that it is the responsibility of the Congress to address any void in jurisdiction that may result from this ruling; and

WHEREAS, the Indian Civil Rights Act should be reviewed to ensure that its goals will be met;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the North Dakota Legislative Assembly commends the Congress of the United States for passing Section 8077 (b) and (c) of Public Law No. 101-511 (signed by the President on November 5, 1990), which temporarily affirmed that tribes do retain criminal misdemeanor jurisdiction over all Indians in Indian country and does hereby urge the Congress of the United States to make this provision of Public Law No. 101-511 permanent law; and

BE IT FURTHER RESOLVED, that the North Dakota Legislative Assembly joins the tribes of North Dakota by formally requesting that the North Dakota Congressional Delegation and the United States Senate Select Committee on Indian Affairs support federal legislation confirming that tribal governments have the authority to maintain criminal jurisdiction over nonenrolled and nonmember Indians who commit criminal acts within the external boundaries of reservations and upon lands of the tribes; and

BE IT FURTHER RESOLVED, that the North Dakota Congressional Delegation support review of the Indian Civil Rights Act to ensure that its goals are accomplished; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the North Dakota Congressional Delegation, the United States Senate Select Committee on Indian Affairs, and the respective tribes of North Dakota.

Filed April 10, 1991

## CHAPTER 863

SENATE CONCURRENT RESOLUTION NO. 4059  
(Peterson)  
(Approved by the Committee on Delayed Bills)

### PHYSICAL EDUCATION PROGRAM QUALITY

A concurrent resolution urging that a high quality physical education program be provided to each North Dakota student from kindergarten through grade 12.

WHEREAS, physical education is essential to the development of growing children; and

WHEREAS, physical education increases children's mental alertness, academic performance, readiness to learn, and enthusiasm for learning; and

WHEREAS, physical education helps improve the self-esteem, interpersonal relationships, responsible behavior, and independence of children; and

WHEREAS, physical education helps improve the overall health of children by improving their cardiovascular endurance, muscular strength, power, and flexibility, and by enhancing weight regulation, bone development, posture, skillful moving, active lifestyle habits, and constructive use of leisure time; and

WHEREAS, children who participate in high quality physical education programs tend to be healthier and more physically fit; and

WHEREAS, physically fit adults have significantly reduced risk factors for heart attacks and strokes; and

WHEREAS, the Surgeon General in "Objectives for the Nation" recommended increasing the number of school-mandated physical education programs that focus on health-related physical fitness; and

WHEREAS, the Secretary of Education in "First Lessons - A Report on Elementary Education in America" recognized that elementary schools have a special mandate to provide elementary school children with the knowledge, habits, and attitudes that will equip the children for a fit and healthy life; and

WHEREAS, the North Dakota Department of Public Instruction, in cooperation with the North Dakota Alliance of Health, Physical Education, Recreation, and Dance produced the "Guidelines for Physical Education" for use in the development of quality physical education programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly urges the cooperation of state and local governmental entities, as well as the private sector, in ensuring that a high quality physical education program is provided to each North Dakota student from kindergarten through grade 12; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Superintendent of Public Instruction.

Filed March 28, 1991

## CHAPTER 864

SENATE CONCURRENT RESOLUTION NO. 4060  
(Keller, Freborg)  
(Approved by the Committee on Delayed Bills)

### **GLENHAROLD MINE**

A concurrent resolution urging the United States Department of the Interior's Bureau of Land Management and the North Dakota Congressional Delegation to take action to allow mining of the maximum amount of coal available from the Glenharold mine in west central North Dakota.

WHEREAS, the Glenharold coal mine in west central North Dakota has produced coal from surface mining operations for over 20 years in compliance with applicable state and federal laws, including a progressive program of land reclamation; and

WHEREAS, the Glenharold mine was originally projected to produce coal until 1995 but, due a decision of the United States Department of the Interior's Bureau of Land Management, the mine will now have to cease production in 1993; and

WHEREAS, closure of the mine will leave over five million tons of coal in the ground that could be mined and which will probably never be recovered, resulting in a regrettable waste of a precious resource; and

WHEREAS, failure to mine five million tons of available coal would result in coal severance tax revenue losses of \$2,437,500 to the state of North Dakota, \$525,000 to Mercer County, \$393,750 to cities in Mercer County, \$393,750 to school districts in Mercer County, and \$100,000 to the North Dakota Lignite Research Fund; and

WHEREAS, closure of the Glenharold mine would end the employment of the mine's 105 employees, for whom the annual payroll is \$4,600,000, and because each dollar of lignite industry payroll generates an additional three dollars to North Dakota's economy, the state's economy would be negatively impacted in the approximate amount of \$18,400,000 per year by early closure of the mine; and

WHEREAS, an agreement by the Bureau of Land Management to accept an eight percent royalty on the remaining coal at the Glenharold mine, rather than the standard 12.5 percent royalty, would allow the recovery of over five million tons of coal that will otherwise be unused; and

WHEREAS, when the Bureau of Land Management could obtain an eight percent royalty on over five million tons of coal as compared to receiving no royalty and when our nation's precious resources would be more efficiently used by allowing the mining of the available coal before completion of reclamation of the land, it seems very short-sighted that the Bureau of Land Management has denied the request of the mine operator for a reduced royalty; and



WHEREAS, if the Bureau of Land Management does not reverse this decision, the North Dakota Congressional Delegation should seek congressional resolution of this issue to allow mining of the available coal to avoid loss of federal, state, and political subdivision revenue and waste of a valuable natural resource;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly of North Dakota urges the United States Department of the Interior's Bureau of Land Management to reconsider its action denying a royalty rate reduction for operation of the Glenharold mine in North Dakota and urges the North Dakota Congressional Delegation to do whatever is necessary to resolve this matter successfully or to introduce legislation in Congress to allow mining of the available coal at the Glenharold mine before the mine is closed and the land is reclaimed; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the majority and minority leaders of the United States House of Representatives and Senate, the Secretary of the United States Department of Interior, the Washington, D. C. office and the Montana state office of the Bureau of Land Management, and each member of the North Dakota Congressional Delegation.

Filed March 28, 1991

## CHAPTER 865

SENATE CONCURRENT RESOLUTION NO. 4061  
(Freborg)  
(Approved by the Committee on Delayed Bills)

### **CHILD SEXUAL ABUSE OFFENDERS STUDY**

A concurrent resolution directing the Legislative Council to study the investigation, prosecution, and treatment of offenders in child sexual abuse cases.

WHEREAS, child abuse and neglect reports increased from 767 cases in 1976 to 3,626 reports in 1990, an increase of 473 percent; and

WHEREAS, the average age of a child in those cases where a probable cause determination was made that abuse or neglect occurred, was seven and eight-tenths years; and

WHEREAS, special skills are necessary to effectively investigate and prosecute cases where children are the victims of or witnesses to crime; and

WHEREAS, in a typical case where children are the victims of or witnesses to crime, several months may elapse between the time of the report to authorities and the time of trial; and

WHEREAS, it is in the best interests of children that such proceedings be handled as expeditiously as possible; and

WHEREAS, treatment options for offenders in child sexual abuse cases are extremely limited in North Dakota, yet are crucial for the protection of children;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the need for establishing and funding a team of professionals to investigate and prosecute child sexual abuse cases, study laws designed to expedite the prosecution of child sexual abuse cases, and study the need for programs and facilities designed for the treatment of child sexual abuse offenders and child abuse victims; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 866

SENATE CONCURRENT RESOLUTION NO. 4062  
(Senators Freborg, Keller, Bowman)  
(Representatives Whalen, Delzer, Bodine)  
(Approved by the Committee on Delayed Bills)

### FEDERAL LIGNITE ROYALTY

A concurrent resolution urging the United States Congress to pass legislation giving the United States Secretary of the Interior the authority to establish a reduced royalty rate on low-Btu federal lignite with a heating value below 7,500 Btus per pound.

WHEREAS, North Dakota has 35 billion tons of recoverable low-Btu lignite reserves and mines approximately 30 million tons of lignite annually; and

WHEREAS, approximately 25 percent of North Dakota's lignite reserves are under federal ownership; and

WHEREAS, the lignite industry provides North Dakota with 18,000 jobs, \$1.2 billion in business activity, and more than \$60 million in tax revenue annually; and

WHEREAS, North Dakota's lignite resources offer the state the potential for future economic development, increased jobs, and additional tax revenue; and

WHEREAS, the current federal coal royalty rate fails to take into account differences in coal quality and mining costs, which places lignite at a competitive disadvantage; and

WHEREAS, the current federal coal royalty has caused mine operators in North Dakota to defer development of millions of tons of federal lignite and the actual bypass of over six million tons of federal lignite, resulting in lost revenue to state and federal governments; and

WHEREAS, mining operations at the Glenharold Mine near Stanton, North Dakota, will end two years earlier than planned and bypass five million federal tons of lignite because the United States Department of the Interior has denied requests to reduce the royalty on federal lignite at the mine under the guidelines set forth in Section 39 of the Mineral Leasing Act; and

WHEREAS, the state of North Dakota through its Board of University and School Lands has granted reduced royalties on state-owned lignite to a level closer to the royalty paid for privately owned lignite mined in North Dakota; and

WHEREAS, a reduced royalty on federal lignite would provide for more efficient recovery of North Dakota's lignite reserves and improve the market competitiveness of lignite;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly of North Dakota urges the Congress of the United States to pass legislation authorizing the United States Secretary of the Interior to establish a reduced coal royalty rate for federal lignite that has a heating value below 7,500 Btus per pound; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the United States President; the Director of the United States Office of Management and Budget; the United States Secretary of the Interior; the Director of the Bureau of Land Management; the chairmen and members of the Senate Energy and Natural Resources Committee, Senate Environment and Public Works Committee, and the House Interior and Insular Affairs Committee; and to each member of the North Dakota Congressional Delegation.

Filed March 28, 1991

## CHAPTER 867

SENATE CONCURRENT RESOLUTION NO. 4063

(Senators Thane, Dotzenrod)

(Representative Peterson)

(Approved by the Committee on Delayed Bills)

### BAGG BONANZA FARM SUPPORT

A concurrent resolution urging certain state agencies to provide support and assistance in developing the Bagg Bonanza Farm historic site.

WHEREAS, bonanza farms were vital in the settlement of Dakota Territory and the Bagg Bonanza Farm, at Mooreton, North Dakota, retains the most historical integrity of the few remaining bonanza farms; and

WHEREAS, the Bagg Bonanza Farm is listed on the North Dakota and federal historic sites registries; and

WHEREAS, the Bagg Bonanza Farm is developing an agricultural interpretive center to promote rural economic growth; and

WHEREAS, the Bagg Bonanza Farm Historic Preservation Society is restoring the 24 buildings on the original 17-acre farmsite so that tourists can view the restored portions and observe the continuing progress in restoring the site; and

WHEREAS, the Bagg Bonanza Farm, located near the intersection of Interstate 29 and North Dakota Highway 13, has attracted 5,000 visitors since its September 1990 opening; and

WHEREAS, progress on the project to date is due to cooperative efforts of community members, businesses, corporations, organizations, and county, state, and federal agencies; and

WHEREAS, the Bagg Bonanza Farm Historic Preservation Society's goal is to showcase a 1920s Bonanza Farm, as a living historical, educational, and interpretive center dedicated to preserving a portion of our past as a legacy for the future;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That state agencies involved in efforts to promote tourism, including the Tourism Department and the Department of Parks and Recreation, are urged to provide such support and assistance in the development of the Bagg Bonanza Farm project as they can within their budgetary limitations.

Filed March 28, 1991

## CHAPTER 868

SENATE CONCURRENT RESOLUTION NO. 4064  
(Senators Schoenwald, Krebsbach, Maxson, Redlin)  
(Representatives B. Anderson, Porter, Price, Snyder,  
Thorpe, Timm, Tollefson, Wentz)  
(Approved by the Committee on Delayed Bills)

### MINOT GYM DANDYS ACRO TEAM

A concurrent resolution recognizing the Minot Gym Dandys Acro Team for their national prominence and designating the team as Official Goodwill Ambassadors of North Dakota.

WHEREAS, the Minot Gym Dandys Acro Team has achieved national prominence through performances in many parts of the United States before thousands of people at professional and amateur sporting events and is scheduled to appear in March at two National Basketball Association games in Los Angeles and one in Sacramento and at Sea World; and

WHEREAS, the enthusiastic and talented performances of the Minot Gym Dandys Acro Team make North Dakotans proud that this group is from our state and display one of the great virtues of our state in strong and healthy children; and

WHEREAS, the goodwill already, and yet to be, generated by the Minot Gym Dandys Acro Team is deserving of official recognition;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Minot Gym Dandys Acro Team is recognized for their national prominence and the team is hereby designated as "Official Goodwill Ambassadors of North Dakota"; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Minot Gym Dandys Acro Team and their coach.

Filed March 14, 1991

## CHAPTER 869

### SENATE CONCURRENT RESOLUTION NO. 4065 (Nething, Marks)

#### STATE HOSPITAL STUDY

A concurrent resolution directing the Legislative Council to study additional programs that could be implemented by the State Hospital and alternative uses for the facilities of the State Hospital.

WHEREAS, the North Dakota State Hospital in Jamestown is required to offer care and treatment to the mentally ill; and

WHEREAS, more treatment is being provided to the mentally ill through community-based programs and better medications are being used to treat mentally ill persons; and

WHEREAS, the use of community-based programs and better medications is resulting in a decreased need for inpatient treatment of the mentally ill at the State Hospital; and

WHEREAS, the facilities at the State Hospital may be available to implement alternative programs, including but not limited to, programs for adolescents, persons suffering from head injuries, chemical dependency, or acquired immune deficiency syndrome, or for use as a forensic hospital, in addition to continuing to provide services for the mentally ill; and

WHEREAS, alternative uses of the facilities of the State Hospital could result in expanded services for residents of North Dakota or contracted services to meet unmet regional or national needs that could result in additional revenue for the state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the decreasing admissions at the State Hospital and explore possible additional programs that could be administered by the State Hospital or alternative uses for the facilities of the State Hospital; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991

## CHAPTER 870

SENATE CONCURRENT RESOLUTION NO. 4066  
(Senators Mushik, Kelly)  
(Representatives Dalrymple, Larson)

### HUMAN SERVICES SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the human services system.

WHEREAS, it is the stated mission of the Department of Human Services to provide or promote efficient and effective services to benefit identified vulnerable children, adolescents, adults, elderly, and families; and

WHEREAS, the demographics, economic needs, and program needs of the state have changed since the current human services system of providing services was established; and

WHEREAS, the population of the state is developing into a population of older than average citizens; and

WHEREAS, the state has realized a decrease in federal funding, and a change in federal funding structures, while incurring a federally imposed obligation to provide an increasing number of programs and services; and

WHEREAS, the costs of these programs and services continue to escalate; and

WHEREAS, the current system may no longer be effective in providing services to identified vulnerable children, adolescents, adults, elderly, and families;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the human services system, with special attention to the strengths and weaknesses of current health and income maintenance programs and related policies, the administrative structures in place at all levels, innovative, efficient funding proposals for paying the cost of implementing necessary changes as well as proposals for long-range financing of human service programs in light of the escalating costs of these programs, and the social protections necessary to benefit those in need, especially the isolated rural populations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed March 28, 1991



## CHAPTER 871

SENATE CONCURRENT RESOLUTION NO. 4067  
(Senator Yockim)  
(Representative Schmidt)

### **SUBROGATION AND ADDITIONAL INSURED STUDY**

A concurrent resolution directing the Legislative Council to study workers' compensation, insurance, and contract issues that may arise when an employer or insurer requires subrogation, additional insured coverage, or indemnification of an employee or contractor.

WHEREAS, it is apparently common practice in the oil industry that service contractors or employees are required by employers to carry insurance containing a waiver of subrogation clause and an additional insured clause and these requirements should be examined to determine the equity of such requirements; and

WHEREAS, indemnification requirements in contracts in the oil industry are commonly required and have been prohibited by law in Wyoming and perhaps other states; and

WHEREAS, subrogation, additional insured coverage, and indemnification requirements should be examined in light of North Dakota's workers' compensation laws and with consideration of equity for all parties involved to determine whether legislation is needed to regulate insurance and contracts in employer and employee or contractor arrangements;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study workers' compensation, insurance, and contract issues that arise in consideration of the equity of subrogation, additional insured, and indemnification requirements imposed upon contractors and employees in the oil industry and in other industries within this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-third Legislative Assembly.

Filed April 4, 1991

## CHAPTER 872

### SENATE CONCURRENT RESOLUTION NO. 4070

(Senators Nalewaja, Kelly, Lindgren, Mathern, Peterson, Tennefos)  
(Representatives R. Berg, Bernstein, Dorso, Gabrielson, Gorman,  
Kloubec, Larson, Payne, Pyle, Scherber, Schneider, Soukup)  
(Approved by the Committee on Delayed Bills)

## **BISON CLUB HOCKEY TEAM CONGRATULATED**

A concurrent resolution congratulating the North Dakota State University Bison club hockey team for winning the 1991 national collegiate club hockey tournament held at Tucson, Arizona.

WHEREAS, the North Dakota State University Bison club hockey team has completed seven full seasons of collegiate competition and has captured six national championships; and

WHEREAS, the North Dakota State University Bison club hockey team won the 1991 national collegiate club hockey tournament by winning four consecutive games against teams that were ranked higher than the Bison entering the tournament; and

WHEREAS, collegiate club hockey at North Dakota State University has become a huge success in the first seven full years of competition and the team's outstanding record and six national championships are accomplishments of which North Dakotans can be justifiably proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly takes great pride and pleasure in extending its congratulations to the North Dakota State University Bison club hockey team and their coach, Jeff Aikens; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration at North Dakota State University, to the North Dakota State University Bison hockey club and team members, and to head coach Jeff Aikens.

Filed March 19, 1991

## CHAPTER 873

SENATE CONCURRENT RESOLUTION NO. 4071  
(Senators Dotzenrod, Thane)  
(Representatives Grumbo, Peterson, Hausauer)  
(Approved by the Committee on Delayed Bills)

### **KAYE BRAATEN CONGRATULATIONS**

A concurrent resolution congratulating Richland County Commissioner Kaye Braaten on her rise to the presidency of the National Association of Counties.

WHEREAS, Kaye Braaten was the first woman elected to the seat of county commissioner in North Dakota and has been a Richland County Commissioner since 1972; and

WHEREAS, Kaye Braaten has served her county well and was also the first woman to serve as president of the North Dakota County Commissioners Association; and

WHEREAS, Kaye Braaten then became involved with county government on the national level by serving on committees of the National Association of Counties; and

WHEREAS, Kaye Braaten was elected 3rd vice president of the National Association of Counties in 1988 and has moved up through the chairs, promoting good county government and representing counties in rural states; and

WHEREAS, Kaye Braaten will be inaugurated as president of the National Association of Counties on July 16, 1991, in Salt Lake City;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Senate and the House extend to Kaye Braaten their heartiest congratulations upon her election as president of the National Association of Counties; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Kaye Braaten and to the National Association of Counties.

Filed March 19, 1991

## CHAPTER 874

### SENATE CONCURRENT RESOLUTION NO. 4072

(Senators Nalewaja, Kelly, Lindgren, Mathern, Peterson, Tennesos)  
(Representatives R. Berg, Bernstein, Dorso, Gabrielson, Gorman,  
Kloubec, Larson, Payne, Pyle, Scherber, Schneider, Soukup)  
(Approved by the Committee on Delayed Bills)

## **BISON WOMEN'S BASKETBALL CONGRATULATIONS**

A concurrent resolution congratulating the North Dakota State University Bison women's basketball team for winning the 1991 NCAA Division II national championship.

WHEREAS, the North Dakota State University Bison women's basketball team capped a 31-4 basketball season by claiming their first NCAA Division II national championship with an 81-74 victory over Southeast Missouri State University; and

WHEREAS, the North Dakota State University Bison women's basketball team displayed remarkable individual talent and yet, under the guidance of coach Amy Ruley, combined for a true team effort with solid team defense and balanced offensive production; and

WHEREAS, the women's basketball program at North Dakota State University has become a huge success and the team's outstanding record and national championship victory are accomplishments of which North Dakotans can be proud;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-second Legislative Assembly takes great pride and pleasure in extending its congratulations to the North Dakota State University Bison women's basketball team and their coach, Amy Ruley, for winning the national championship; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration at North Dakota State University, to the members of the North Dakota State University Bison women's basketball team, and to head coach Amy Ruley.

Filed April 4, 1991

## CHAPTER 875

SENATE CONCURRENT RESOLUTION NO. 4073  
(Committee on Employment)  
(Approved by the Committee on Delayed Bills)

### POSTSESSION EMPLOYEES

A concurrent resolution authorizing the retention of certain employees of the Senate and House to allow for the completion of legislative work after the close of the session.

WHEREAS, it is necessary to complete and close work of the regular session of the Fifty-second Legislative Assembly; and

WHEREAS, certain legislative employees should be retained to complete and close this work;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following named positions may be retained by the Senate and the House of Representatives after the adjournment of the regular session:

#### SENATE POSITIONS

Secretary of the Senate  
Desk Reporter  
Bill Clerk  
Sergeant-at-Arms  
Deputy Sergeant-at-Arms  
Deputy Sergeant-at-Arms  
Chief Page and Bill Book Clerk  
Chief Stenographer and Payroll Clerk  
Stenographer  
Chief Committee Clerk  
Appropriations Committee Clerk  
Assistant Appropriations Committee Clerk  
Judiciary Committee Clerk  
Secretary to Majority Leader  
Staff Assistant to Majority Leader  
Secretary to Minority Leader  
Staff Assistant to Minority Leader  
Journal Room Clerk  
Chief Telephone Attendant

#### HOUSE POSITIONS

Chief Clerk  
Assistant Chief Clerk  
Desk Reporter  
Bill Clerk  
Sergeant-at-Arms  
Chief Page and Bill Book Clerk

Chief Stenographer and Payroll Clerk  
Appropriations Committee Clerk  
Assistant Appropriations Committee Clerks  
Secretary to Speaker  
Secretary to Majority Leader  
Secretary to Minority Leader  
Desk Pages  
Assistant Sergeant-at-Arms  
Chief Bill and Journal Room Clerk  
Bill Room Clerk  
Chief Assistant Committee Clerk  
Supply Room Clerk

BE IT FURTHER RESOLVED, that the above-listed Senate and House employees shall serve at the request of, and under the supervision of, the Secretary of the Senate and the Chief Clerk of the House, and that all of the listed employees, including the Secretary of the Senate and the Chief Clerk of the House may not be employed for more than 200 man-days in the aggregate. The Secretary of the Senate and the Chief Clerk of the House shall assign work among the available Senate and House employees, respectively, in the appropriate manner. The Secretary of the Senate and the Chief Clerk of the House shall coordinate the work assignments in their respective houses in such a manner that the total number of man-days utilized does not exceed the aggregate limit on man-days in this resolution. The Secretary of the Senate and the Chief Clerk of the House shall minimize the days spent in completion of legislative business to the extent consistent with that completion; and

BE IT FURTHER RESOLVED, that the employees in the above-named positions be paid their regular rates of pay as specified in House Concurrent Resolution No. 3025 for work pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Fifty-second and Fifty-third Legislative Assemblies, and after completion of the work, provided that each above-listed employee must be paid on a pro rata basis if the total number of man-days exceeds the aggregate limit.

Filed April 11, 1991

# HOUSE RESOLUTION

## CHAPTER 876

HOUSE RESOLUTION NO. 1  
(Belter, Dalrymple)

### JOE NELSON CONGRATULATED

A resolution congratulating Mr. Joe Nelson upon his election as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee.

WHEREAS, Mr. Joe Nelson is a 29-year-old farmer from Casselton, North Dakota; and

WHEREAS, Mr. Joe Nelson was appointed by the American Farm Bureau Federation President, Mr. Dean Kleckner, to serve on the American Farm Bureau Federation Young Farmer and Rancher Committee; and

WHEREAS, Mr. Joe Nelson was, on January 7, 1991, at the annual meeting of the American Farm Bureau Federation in Phoenix, Arizona, elected chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee; and

WHEREAS, Mr. Joe Nelson in his capacity as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee will serve as a voting member of the board of directors of the American Farm Bureau Federation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That the House of Representatives extends to Mr. Joe Nelson its heartiest congratulations upon his election as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Mr. Joe Nelson.

Filed January 30, 1991

# HOUSE MEMORIAL RESOLUTION

## CHAPTER 877

HOUSE MEMORIAL RESOLUTION NO. A  
(Committee on Memorial Resolutions)

### DECEASED HOUSE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the House of Representatives of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

JAMES CONNOLLY, who served in the 38th through the 41st Legislative Assemblies, from the 33rd District, died August 5, 1989.

ARNOLD GRONNEBERG, who served in the 42nd through the 45th Legislative Assemblies, from the 23rd District, died May 13, 1990.

GERALD A. HALMRAST, who served in the 44th and the 48th through the 51st Legislative Assemblies, from the 52nd District, died September 11, 1990.

DONALD F. HANSON, who served in the 30th Legislative Assembly, from the 43rd District, died April 22, 1990.

ARTHUR A. HERK, who served in the 29th and 30th Legislative Assemblies, from the 38th District, died October 23, 1990.

J. GARVIN JACOBSON, who served in the 38th Legislative Assembly, from the 36th District, died February 22, 1990.

CLARK JENKINS, who served in the 40th through the 43rd Legislative Assemblies, from the 21st District, died March 20, 1990.

PALMER LEVIN, who served in the 24th through the 33rd Legislative Assemblies, from the 3rd District, died February 27, 1990.

LAWRENCE ROSENDAHL, who served in the 39th Legislative Assembly, from the 28th District, died September 14, 1990.

LEO STICKA, who served in the 28th through the 34th Legislative Assemblies, from the 31st District, died July 26, 1990.

WHEREAS, today, as members of the House of Representatives of the 52nd Legislative Assembly of North Dakota, we pause to mourn the passing of our former colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:



That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues, through the words of the following poem, which was the last poem written by the former Representative Ralph Dotzenrod:

Today I'll start with the rising sun  
To use what God has given me  
To use as I will 'til the day is done  
For good or ill as my choice may be.

It's really important my choice is true  
I'm trading a day of my life away  
When tomorrow comes may I never rue  
What I've bought with the coins of life today.

May it not be loss, but a gain I buy  
May it not be evil, but good instead  
May I cheer the heart of a passerby  
Or brighten a life by the right word said.

Tomorrow will come, and today will fade  
May I be sure when this day is past  
The things I have bought with my coins in trade  
Will not be regrets, but are joys that last.

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased Representatives.

Filed March 26, 1991

# SENATE RESOLUTIONS

## CHAPTER 878

### SENATE RESOLUTION NO. 1 (Nelson)

#### LOIS J. SCHERR RECOVERY WISHES

A resolution wishing Lois J. Scherr a speedy recovery from her illness.

WHEREAS, Lois Scherr began serving the Fifty-second Legislative Assembly, prior to its convening, as Secretary to the Minority Leader, and performed her duties faithfully and well; and

WHEREAS, Lois also served as Secretary to the Majority Leader from 1975-1985; Chief Committee Clerk from 1967-1973, including the 1972 Constitutional Convention; Committee Clerk from 1959-1961 and in 1965; and Stenographer in 1955, 1963, and 1989; and

WHEREAS, the members of the Senate of the Fifty-second Legislative Assembly appreciated her services and miss them during the continuation of the Fifty-second Legislative Assembly; and

WHEREAS, Lois has been struggling with illness for a good part of the time since the opening session of the Fifty-second Legislative Assembly; and

WHEREAS, Lois is presently hospitalized at St. Alexius Medical Center in Bismarck;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That all members of the Senate wish Lois Scherr a speedy and complete recovery and also wish to take this opportunity to say we miss her and our prayers are with her; and

BE IT FURTHER RESOLVED, that the Chief Clerk of the Senate send an enrolled copy of this resolution to Lois J. Scherr.

Filed January 24, 1991

## CHAPTER 879

### SENATE RESOLUTION NO. 2

(Moore)

(Approved by the Committee on Delayed Bills)

## JOE NELSON CONGRATULATIONS

A resolution congratulating Mr. Joe Nelson upon his election as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee.

WHEREAS, Mr. Joe Nelson is a 29-year-old farmer from Casselton, North Dakota; and

WHEREAS, Mr. Joe Nelson was appointed by the American Farm Bureau Federation President, Mr. Dean Kleckner, to serve on the American Farm Bureau Federation Young Farmer and Rancher Committee; and

WHEREAS, Mr. Joe Nelson was, on January 7, 1991, at the annual meeting of the American Farm Bureau Federation in Phoenix, Arizona, elected chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee; and

WHEREAS, Mr. Joe Nelson in his capacity as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee will serve as a voting member of the board of directors of the American Farm Bureau Federation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That the Senate extends to Mr. Joe Nelson its heartiest congratulations upon his election as chairman of the American Farm Bureau Federation Young Farmer and Rancher Committee; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Mr. Joe Nelson.

Filed March 5, 1991

**CHAPTER 880****SENATE RESOLUTION NO. 3**

(Naaden)

(Approved by the Committee on Delayed Bills)

**NADINE SCHMIDT CONGRATULATIONS**

A resolution congratulating Nadine Schmidt on being selected as the Most Valuable Player at the NCAA Division II final four women's national basketball championship.

WHEREAS, Nadine Schmidt completed a record-setting high school career at Braddock, North Dakota, by being named Miss Basketball for North Dakota and chose to remain in North Dakota to attend college and play collegiate basketball at North Dakota State University; and

WHEREAS, Nadine Schmidt completed her sophomore season at North Dakota State University by leading the North Dakota State University Bison women's basketball team to its first NCAA Division II national championship; and

WHEREAS, Nadine Schmidt was named the Most Valuable Player at the NCAA Division II final four women's basketball championship;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That the Senate takes great pride and pleasure in extending its congratulations to Nadine Schmidt on her outstanding season and being named Most Valuable Player at the NCAA Division II final four women's basketball championship; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of the Senate to the administration at North Dakota State University, to North Dakota State University Bison women's basketball head coach Amy Ruley, and to Nadine Schmidt and her family.

Filed April 3, 1991

# SENATE MEMORIAL RESOLUTION

## CHAPTER 881

SENATE MEMORIAL RESOLUTION NO. 1  
(Committee on Memorial Resolutions)

### DECEASED SENATE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the Senate of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

JOHN E. DAVIS, who served in the 33rd and 34th Legislative Assemblies, from the 35th District, died May 12, 1990.

CLARK EWEN, who served in the 51st Legislative Assembly, from the 20th District, died September 23, 1990.

J. GARVIN JACOBSON, who served in the 40th through the 46th Legislative Assemblies, from the 36th District, died February 22, 1990.

R. V. "DICK" SHEA, who served in the 49th through the 51st Legislative Assemblies, from the 43rd District, died March 16, 1990.

WHEREAS, today, as members of the Senate of the 52nd Legislative Assembly of North Dakota, we pause to mourn the passing of our former colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased Senators.

Filed March 28, 1991